

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-7405

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 76-7405

PAT WRIGHT and JACK LIEBERMAN,

Plaintiffs-Appellants,

-against-

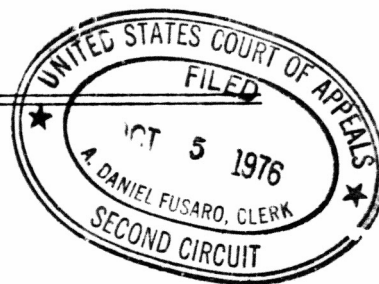
CHIEF OF TRANSIT POLICE, and CHAIRMAN and
MEMBERS OF THE BOARD OF THE NEW YORK CITY
TRANSIT AUTHORITY,

Defendants-Appellees.

APPENDIX ON APPEAL

STUART RIEDEL, Esq.
General Counsel,
New York City Transit Authority
370 Jay Street
Brooklyn, New York 11201
Attorney for Defendants-Appellees

HERBERT JORDAN, Esq.
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30 East 42nd Street
New York, New York 10017
Attorney for Plaintiffs-Appellants.



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WEIGHT

.v

TRANSIT POLICE

DATE	NR.	PROCEEDINGS	
-21-75		Complaint filed. Summons issued.	(1)
-24-75		Notice of Motion for preliminary injunction ret 3-7-75 filed.	(2)
-24-75		Pltff's memorandum in support of motion for preliminary injunction filed.	(3)
-27-75		Summons returned and filed/executed.	(4)
-6-75		Affidavit of Herbert Jordan in opposition to defts' application for adj'ment of return date of pltffs' motion for preliminary injunction filed.	(5)
-6-75		Affidavit of James P. McMahon filed.	(6)
-19-75		ANSWER filed.	(7)
-19-75		Affidavit of John G. de Roos and memorandum of law in opposition to pltffs' motion for a preliminary injunction filed.	(8/9)
20-75		Pltffs' reply brief filed.	(10)
-4-75		By BRUCHHAUSEN, J.-Memorandum and Order dtd 4-4-75 denying pltffs' motion for preliminary injunction filed. (p/c mailed)	(11)
-8-75		Notice of Appeal filed. Copy sent to C of A. JN	(12)
4-21-75		Above record certified & handed to Barbara Kapnick for delivery to C of A.	
22/75		Acknowledgment received from court of appeals for receipt of record.	(13)
18/75		Notice of Motion to Dismiss ret 8/1/75 filed.	(14)
18/75		Memorandum in Support of Deft's Motion to Dismiss filed.	(15)
22/75		Deft's First Written Interrogatories to Pltffs filed.	(16)
-10-76		Certified copy of order of C of A affirming order of district court and that the action be remanded for further proceedings with the District Court filed.	(14)
-13-76		Before BRUCHHAUSEN, J.- Case called for trial On trial	
-25-76		Record received from the C of A. Acknow. mailed.	(15)
-27-76		Stenographer's transcript dtd 5-13-76 filed.	(16)
-10-76		Defts trial memo with exhibits attached filed.	(17)
-10-76		Defts post trial brief for judgment in favor of the pltff filed.	(18)
-17-76		Pltffs' response to defts' trial memorandum filed.	(19)
-15-76		By BRUCHHAUSEN, J.-Memorandum & Order dtd 7-10-76 dismissing the complaint filed. Copies mailed. mg	(20)
-16-76		Judgment that the pltffs take nothing of the defts and that the complaint is dismissed filed.	(21)
8-13-76		Notice of appeal filed. Copy to C of A and defts.	(22)
9-1-76		Civil appeal scheduling order filed.	

BEST COPY AVAILABLE

Complaint

Bruchhausen, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
PAT WRIGHT and JACK LIEBERMAN, :

Plaintiffs, :

-against- :

CHIEF OF TRANSIT POLICE, and CHAIRMAN :
and MEMBERS OF THE BOARD OF THE NEW :
YORK CITY TRANSIT AUTHORITY, :

Defendants. :

75C 272

Civil Action No.

COMPLAINT

-----x
Plaintiffs, by their attorneys, allege:

1. This case arises under the Constitution, Amendments I and XIV, and under 42 U.S.C. § 1983. Jurisdiction is conferred by 28 U.S.C. §§ 1331 and 1343(4).

2. The amount in controversy exceeds \$10,000 exclusive of interest and costs.

3. Plaintiff Pat Wright resides at 95 Eastern Parkway, Apt. 1D, Brooklyn, New York. Plaintiff Jack Lieberman resides at 504 West 110th Street, Apt. 9D, New York, New York.

4. The defendants are the Chairman and Members of the Board of the New York City Transit Authority, and the Chief of Transit Police, an officer of the New York City Transit Authority. Defendants are headquartered at 370 Jay Street, Brooklyn, New York.

5. At all times referred to below, defendants acted in their official capacities under color of state law. They are sued in their official capacities.

Complaint

6. Plaintiffs are members of the Socialist Workers Party ("SWP").

7. The SWP is a nationwide political party which seeks to bring socialism to the United States through distribution of literature, electioneering and other lawful and orderly methods. The SWP seeks and finds its largest constituency among the working class.

8. As a means of communicating the ideas and programs of their party and its candidates, plaintiffs spend one to two hours per week selling copies of The Militant and Young Socialist newspapers in streets and other public places.

9. The Militant and Young Socialist contain analysis and reporting of current events from a socialist perspective and, in recent years, the papers have supported most of the programs and electoral candidates of the SWP.

10. Plaintiffs' method of selling The Militant and Young Socialist is to display the papers by hand and to converse with interested persons about socialism and about the content of the papers.

11. Prior to and during the month of December, 1974, plaintiffs sold copies of The Militant and Young Socialist in subway stations of the New York City Transit Authority.

12. The subway stations are spacious, underground areas, many of which are lined with shops, newsstands, vending machines, lunch counters and similar facilities, and which contain large numbers of working class people.

Complaint

13. During December of 1974, officers of the New York City Transit Police ordered plaintiffs to stop selling The Militant in subway stations and threatened to ticket plaintiffs if they did not stop.

14. By letter dated January 28, 1975, plaintiffs notified the defendants of their desire to sell papers in the subway stations and expressed willingness to abide by reasonable regulations as to specific time, manner and place of selling within the stations. Plaintiffs requested defendants to instruct the transit police officers not to interfere further with such selling.

15. By letter of Mr. John G. de Roos, General Counsel of the New York City Transit Authority, dated February 13, 1975, defendants denied plaintiffs' request, stating that the "sale of 'The Militant' in the manner you propose is prohibited by Transit Authority regulations."

16. Plaintiffs have stopped selling papers in subway facilities, but desire to resume if the threat of adverse action by the police officers is eliminated.

17. By prohibiting plaintiffs from selling The Militant and Young Socialist in the subway stations, defendants prevent plaintiffs from propagating their ideas in a proper place through their method of selling publications in conjunction with personal contact and peaceful discussion, in violation of the First Amendment and 42 U.S.C.A. § 1983.

Complaint

d: 18. As a result of the acts of defendants and their subordinates, plaintiffs have suffered and are suffering irreparable injury, in that they are prevented from propagating their ideas and from building support for their party, its programs and candidates, by means of selling papers in the subway stations, and plaintiffs will continue to sustain like injury unless the defendants are restrained by this court.

19. Plaintiffs have not previously sought relief in this or another court.

WHEREFORE, plaintiffs request judgment in the form of:

1. A declaratory judgment that plaintiffs are entitled to sell The Militant and Young Socialist in person in the subway stations of the New York City Transit Authority, subject to reasonable regulations as to time, manner and place.

2. A permanent injunction, restraining the defendants, their agents, privies, successors and assigns, and all persons acting in concert with them or with knowledge of the judgment, from interfering in any way with the selling of The Militant and/or Young Socialist by plaintiffs in person in the subway stations of the New York City Transit Authority, subject to reasonable regulations as to time, manner and place; and

Complaint

3. Such other relief as may be just and proper.

Herbert Jordan

HERBERT JORDAN

Rabinowitz, Boudin & Standard
Bill of Rights Foundation
30 East 42nd Street
New York, New York 10017
(212) OXford 7-8640
Attorneys for Plaintiffs

Dated: New York, New York
February 21, 1975

Answer

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
PAT WRIGHT and JACK LIEB ERMAN,

Plaintiffs,

-against-

Civil Action No.
75 C 272

CHIEF OF TRANSIT POLICE, and CHAIRMAN
and MEMBERS OF THE BOARD OF THE
NEW YORK CITY TRANSIT AUTHORITY,

ANSWER

Defendants.
-----x

The defendants, by their attorney, in answer to the complaint allege:

FIRST: Denies each and every allegation contained in the paragraphs
1, 2, 5, 17 and 18 of the complaint.

SECOND: Denies knowledge or information sufficient to form a belief as
to the truth of the allegations contained in paragraphs 3, 6, 7, 8, 9, 10, 11,
13, 16 and 19 of the complaint.

THIRD: Denies each and every allegation contained in paragraph 4 of the
complaint except admits that the named defendants are the Chief of the Transit
Police, and the Chairman and Members of the Board of the New York City
Transit Authority, whose principal office is at 370 Jay Street, Brooklyn, N. Y.

FOURTH: Denies each and every allegation contained in paragraph 12 of
the complaint except admits that there are 416 subway stations, some of
which are underground, and some of which contain concessions where safety
and efficiency permit, and that approximately four million passengers are
carried daily.

FIFTH: Denies each and every allegation contained in paragraphs 14
and 15 of the complaint except admit that a letter dated January 28, 1975 was
sent to the Transit Authority (Lieberman affidavit, Exhibit A), and that a reply

Answer

thereto, dated February 13, 1975 was sent by Mr. John G. de Roos to inform counsel for plaintiffs, Mr. Jordan, that the proposed method of sale would violate Authority regulations, and would create hazardous conditions for subway riders. A copy of this letter is annexed hereto and marked Exhibit I.

FOR A FURTHER AND SEPARATE
DEFENSE, DEFENDANTS ALLEGE:

SIXTH: This Court lacks jurisdiction under 28 U. S. C. §1331 because the amount actually in controversy is less than ten thousand dollars exclusive of interest and costs.

FOR A FURTHER AND SEPARATE
DEFENSE, DEFENDANTS ALLEGE:

SEVENTH: The New York City Transit Authority, a public benefit corporation created pursuant to §1201 of the Public Authorities Law, is not a "person" within the meaning of 42 U. S. C. §1983. Therefore, this Court lacks jurisdiction under 28 U. S. C. §1343(4).

FOR A FURTHER AND SEPARATE
DEFENSE, DEFENDANTS ALLEGE:

EIGHTH: The Transit Authority does not prohibit the sale and distribution of plaintiffs' newspaper. However, the proposed method of sale and distribution is proscribed by New York Penal Law §240.35(7) as well as by Transit Authority regulation.

WHEREFORE, the defendants respectfully request a judgment dismissing the complaint in its entirety.

Dated: March 15, 1975

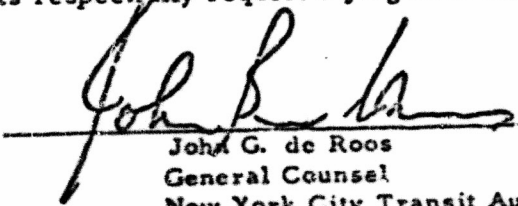

John G. de Roos
General Counsel
New York City Transit Authority
370 Jay Street
Brooklyn, N. Y. 11201

Exhibit 1 to Answer



New York City
Transit
Authority

370 Jay Street Brooklyn, New York 11231 Phone 212 352-5000

David L. Yunich
Chairman and
Chief Executive Officer

Lawrence R. Bailey
Leonard Braun
William L. Butcher
Donald H. Elliott
Justin N. Feldman
Harold L. Fisher
Mortimer J. Gleason
Edwin G. Michaelian
Eben W. Pyne
Constantina Sidamon-Eristoff

John G. deRoos
General Counsel

February 13, 1975

Herbert Jordan, Esq.
Rabinowitz, Boudin & Standard, Esqs.
30 East 42nd Street
New York, N. Y. 10017

Dear Mr. Jordan:

This is in reply to your letter of January 28th in which you request that we advise our Transit Police not to interfere with the sale of "The Militant" by your clients in certain subway stations.

The sale of "The Militant" in the manner you propose is prohibited by Transit Authority regulations. (21 NYCRR Part 1051.) Due to the confined space in the subways, a free flow of passenger traffic must be maintained in order to secure the safety of our riders. Your proposed method of sale would interfere substantially with this traffic flow, and thereby create hazardous conditions for subway riders.

Very truly yours,



John G. de Roos

EXHIBIT 1

Pat WRIGHT and Jack Lieberman,
Plaintiffs-Appellants,

v.

CHIEF OF TRANSIT POLICE, and
Chairman and Members of the Board
of the New York City Transit Author-
ity, Defendants-Appellees.

No. 88, Docket 75-7219.

United States Court of Appeals,
Second Circuit.

Argued Nov. 13, 1975.

Decided Jan. 15, 1976

Members of the Socialist Workers Party brought civil rights suit challenging the denial of permission to personally sell socialist newspapers in New York City subway stations. The United States District Court for the Eastern District of New York, Walter Bruchhausen, J., denied plaintiffs' motion for a preliminary injunction on the ground, *inter alia*, that the court lacked subject matter jurisdiction and because the New York City Transit Authority is not a "person" within the meaning of the Civil Rights Act of 1871, and plaintiffs appealed. The Court of Appeals held that (1) the district court had jurisdiction since, irrespective of the status of the Transit Authority as an agency, the named individual defendants, acting in their official capacity, were "persons" within the meaning of the Act, and (2) plaintiffs failed to demonstrate the threatened irreparable injury necessary for the granting of a preliminary injunction.

Holding that court lacked subject matter jurisdiction reversed; denial of preliminary injunction affirmed.

1. Courts — 284(4)

District court had jurisdiction of suit brought under the Civil Rights Act of 1871 by members of the Socialist Workers Party who challenged the denial of

Cite as 527 F.2d 1262 (1976)

permission to personally sell socialist newspapers in New York City subway stations, since, irrespective of the status of the transit authority as an agency, the named individual defendants, acting in their official capacity, were "persons" within the meaning of the Act. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

2. Civil Rights — 13.2(4)

Members of the Socialist Workers Party who brought civil rights suit challenging the denial of permission to personally sell socialist newspapers in New York City subway stations failed to demonstrate the threatened irreparable injury necessary for the granting of a preliminary injunction. 28 U.S.C.A. § 1343; 42 U.S.C.A. § 1983.

3. Newspapers — 6½

While, relative to the sale or distribution of newspapers or leaflets, the time, manner, and place of solicitation may be regulated, before it can be totally banned a compelling state interest must be shown.

Herbert Jordan, New York City (Rabinowitz, Boudin & Standard, New York City, of counsel), for plaintiffs-appellants.

Stuart Riedel, Brooklyn, N. Y. (James P. McMahon, Brooklyn, N. Y., Nancy A. Serventi, New York City, Terrance J. Nolan, Brooklyn, N. Y., of counsel), for defendants-appellees.

Before FEINBERG, GURFEIN and VAN GRAAFEILAND, Circuit Judges.

PER CURIAM:

Plaintiffs are members of the Socialist Workers Party who have been denied

permission to personally sell socialist newspapers in New York City subway stations.¹ Defendants contend that this activity is prohibited by Transit Authority regulations.²

Plaintiffs sought equitable relief in the District Court for the Eastern District of New York, relying on 42 U.S.C. § 1983 (1970) and the First Amendment. In an unreported opinion dated April 4, 1975, Judge Bruchhausen denied plaintiffs' motion for a preliminary injunction, on the ground, *inter alia*, that the court lacked subject matter jurisdiction under 28 U.S.C. § 1343 (1970) because the New York City Transit Authority is not a "person" within the meaning of § 1983. Although we affirm the denial of the preliminary injunction, the lower court's holding that no jurisdiction existed was incorrect; and we therefore remand for trial.

[1] Whatever may be true of the Transit Authority as an agency, compare *Sams v. New York State Board of Parole*, 352 F.Supp. 296, 298-99 (S.D.N.Y. 1972), with *Forman v. Community Services, Inc.*, 500 F.2d 1246, 1255 (2d Cir. 1974), *rev'd on other grnds. sub nom. United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 846 n. 11, 95 S.Ct. 2051, 44 L.Ed.2d 621 (1975), the named defendants, acting in their official capacity, are "persons" within § 1983. See *Erdmann v. Stevens*, 458 F.2d 1205, 1207-08 (2d Cir.), *cert. denied*, 409 U.S. 889, 93 S.Ct. 126, 34 L.Ed.2d 147 (1972). Moreover, as the individuals responsible for the enforcement of the Transit Authority policy challenged here, defendants play a substantial role in the deprivation of civil rights alleged by plaintiffs.³ Accordingly, we hold that the

1. Plaintiffs' method of selling is to display the papers by hand, offering them to nearby individuals and attempting to engage interested persons in conversation relating to the papers' contents or socialism in general.

2. 22 New York Codes, Rules and Regulations § 1051.9(a) provides:

No person shall in any transit facility or upon any part of the New York City transit system, exhibit, sell or offer for sale, hire,

lease or let out any object or merchandise, or anything whatsoever, whether corporeal or incorporeal.

3. Though the regulation in question was promulgated by an earlier board, when, as here, the members of the present board possess the power to change these regulations and the lawsuit is for equitable relief only, this fact is irrelevant.

court below has jurisdiction over this suit under 28 U.S.C. § 1343(3) (1970).⁴

[2] Judge Bruchhausen also found that plaintiffs had failed to demonstrate the irreparable injury necessary for the granting of a preliminary injunction, and the denial of plaintiffs' motion on such grounds was within his sound discretion. *Kontes Glass Company v. Lab Glass, Inc.*, 373 F.2d 319, 320 (3rd Cir. 1967). Appellants themselves have indicated that they will not be damaged irreparably by waiting for trial. At oral argument, their counsel stated that the appeal would not have been taken at all had the lower court not held that it lacked jurisdiction over the case. Even if Judge Bruchhausen had found plaintiffs entitled to interim relief, it is doubtful that he could have fashioned it effectively on the information before him. Plaintiffs conceded in substance in their moving papers below that any preliminary, injunctive relief granted must be "subject to reasonable regulation as to specific time, manner and place of selling within the [subway] stations," and they do not now contend that the District Court possessed the facts essential to this determination.

[3] Analysis of the merits of this case would be premature in its present posture. Defendants express justifiable concern about passenger safety and convenience, space limitation and the possible inundation of their limited facilities by others who would seek the same rights as plaintiffs. However, it is possible that this concern can be accommodated by less than a complete proscription of plaintiffs' activities. While the time, manner and place of solicitation may be regulated, before it can be totally banned, a compelling state interest must be shown. *Albany Welfare Rights Organization v. Wyman*, 493 F.2d 1519, 1323 (2d Cir.), cert. denied, 419 U.S. 838,

95 S.Ct. 66, 42 L.Ed.2d 64 (1974). Whether such a state interest exists herein must await development of the proof.

We affirm the denial of plaintiffs' motion for a preliminary injunction and remand to the District Court for expeditious trial.



4. *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), and *City of Kenosha v. Bruno*, 412 U.S. 507, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1972), cited by defendants, do not require a contrary result. Indeed, in *Monroe*, the

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4

5 ----- x
6 PAT WRIGHT and :
7 JACK LIEBERMAN, :

8 Plaintiffs, :

9 - against - :
10

11 CHIEF OF TRANSIT POLICE, and :
12 CHAIRMAN and MEMBERS OF THE NEW :
13 YORK CITY TRANSIT AUTHORITY, :

14 Defendants. :
15 ----- -x
16

17 United States Courthouse
18 Brooklyn, New York

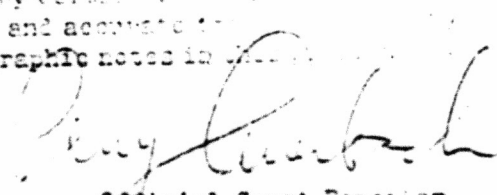
19 May 13, 1976
20 10:45 A.M.

21 B e f o r e :

22 HONORABLE WALTER B. BRUCHHAUSEN,

23 I hereby certify that the foregoing is
24 a true and accurate
25 stenographic report of the proceedings.

U. S. D. J.


26 Official Court Reporter
27 U. S. District Court

28 PERRY AUERBACH
29 Acting Official Court Reporter
30

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A P P E A R A N C E S :

HERBERT JORDAN, ESQ.
Attorney for Plaintiffs

JAMES P. McMAHON, ESQ.
STUART RIEDEL, ESQ. (of Counsel)

TERRANCE J. NOLAN, ESQ.

NANCY A. SERVENTI, ESQ.,
Attorneys for Defendants.

- - -

MR. JORDON: Good morning, your Honor,

THE COURT: Good morning

MR JORDON: I am Herbert Jordon, counsel for the plaintiffs in this action. Unless your Honor wishes otherwise, we are prepared to waive an opening statement in view of the facts that the Court is familiar with the issues in this case as a result of previous litigation on the motion for preliminary injunction, However, if the Court desires, I would be glad to state briefly what the case is about and what we expect to prove.

THE COURT: All right, you may carry on.

MR. JORDON: All right, your Honor. I think in that event I will call my first witness.

THE COURT: Yes.

MR. JORDON: The first witness is Pat Wright.

P A T R I C I A W R I G H T , having first been duly sworn by a judge of this court , was examined and testified as follows:

THE CLERK: State your full name.

THE WITNESS: Patricia Wright.

THE CLERK: And your address.

THE WITNESS: 95 Eastern Parkway.

DIRECT EXAMINATION

1
2 BY MR. JORDON:

3 Q Now, are you the same Pat Wright who is a plain-
4 tiff in this action?

5 A Yes, I am.

6 Q Miss Wright, are you a member of any political
7 party.

8 MR. McMAHON: Objection, your Honor. I don't
9 personally think the membership in a political party
10 is an issue here.

11 THE COURT: Well, I don't see an objection. You
12 may proceed.

13 MR. JORDON: Thank you, your Honor.

14 Q Did you answer the question, Miss Wright?

15 A Yes, sir, I am.

16 Q What political party?

17 A The Socialist Workers Party.

18 MR. JORDON: How long have you been a member of
19 the Socialist Workers Party?

20 A About two and a half to three years.

21 Q During the course of your membership in the party,
22 have you become familiar with the party and its members.

23 A Yes.

24 Q Is the Socialist Workers Party a national political
25 party?

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A Yes, it is.

Q Would you describe for us, please, what the objective of the Socialist Workers Party is?

THE COURT: What is the name?

MR. JORDON: Socialist Workers Party, your Honor.

A To bring socialism to the United States through our publications and talking to people, speaking to them, and other peaceful legal means.

Q Does the party run candidates for president of the United States?

A Yes, it does.

Q When did the party first beginning running presidential candidates?

A In 1948.

Q Did the party run a presidential nominee in every presidential elections since that time?

A Yes, it has.

Q The 1972 presidential election, in how many states was your party's presidential candidates on the ballot?

A On 23 states.

Q Does your party run candidates for federal, state and local offices?

A Yes, we do.

Q Now, in 1974, general elections for example, did

your party run candidates for the state offices --

MR. McMAHON: I would like to repeat my objection.

THE COURT: I think we are going too far. It's possible enough to sustain the objection.

MR. JORDON: The point is that I am simply trying to establish a basis for the reasons why the plaintiff wishes to to sell the newspapers which are an issue in this case.

THE COURT: Well, you have the newspapers. We should find out what's possibly in the newspapers.

MR. JORDON: All right, your Honor. We will pass on that.

Q Now, Miss Wright, what would you describe as the most important single constituency of your party?

A The working class.

Q As part of your work, on behalf of the party, do you have occasion to distribute literature?

A Yes, I do.

Q Would you describe for us, please, some of the items of literature which you distribute?

A Leaflets and militant and young socialist newspapers.

Q Now, in the case of the militant and young social-

Continued 277

Wright-direct

1
2 ist newspapers, did you distribute these newspapers free of
3 charge or did you sell them?

4 A No. We sell them.

5 Q What is your purpose in selling and distributing
6 the newspapers?

7 A We sell out our newspapers to get out our ideas and
8 to convince the people of the importance of socialism.

9 Q How much of your time do you devote on the sell-
10 ing of your newspapers?

11 A From one to two hours per week.

12 Q How many papers do you sell per week?

13 A About fifteen papers.

14 Q Where is the militant newspaper published?

15 A In New York city.

16 Q When did your paper begin publication?

17 A It began in 1928.

18 Q And has it been continuous publication ever since?

19 A Yes, it has.

20 Q Will you describe the content of the militant
21 newspaper for us, please?

22 A Yes. The Militant has coverage on current events
23 with the socialist analysis, and it also covers the campaigns
24 of the Socialist Workers Party, and other articles that inter-
25 pret current events; and news analysis.

1
2 Q Q Now, when you say it covers the campaigns, are
3 you referring to the election campaigns?

4 A Yes.

5 Q Does the paper take a position on the programs,
6 policies of the Socialist Worker Party?

7 A Yes, it does.

8 Q What position does it take?

9 A It supports election campaigns of the Socialist
10 Workers Party.

11 Q What is the sale price of the paper?

12 A It's 25 cents per copy.

13 Now, where is the Young Socialist newspaper
14 published?

15 A In New York city, also.

16 Q When was that publication founded?

17 A In 1957.

18 Q Would you describe the content of the Young
19 Socialist for us please?

20 A The Young Socialist has --- when it comes out
21 less frequently than the Militant and it has articles in it
22 on current events which are more general and longer articles.
23 The news analysis of things going on around the country and
24 also on the election campaigns coverage.

25 Q Does the Young Socialist has a particular

Wright-direct

point of view?

A Yes. To get ideas out about socialism, and to convince people about our program.

Q Now, what is the sale price of the Young Socialist?

A Twentyfive cents.

Q Do the newspapers which you have described, The Militant and the Young Socialist contain any commercial advertising?

A No; other than other political publications.

Q Miss Wright, I have here a copy of the Militant issue dated April 16, 1976, and the Young Socialist issue dated March 1976.

MR. JORDON: I ask the Clerk to mark these as Plaintiff's Exhibit 1.

THE COURT: Is there any objection?

MR. McMAHON: Are these the same papers that were exhibits to you. pleadings?

MR. JORDON: No. These are more recent ones.

MR. McMAHON: I have not seen these.

MR. JORDON: Let me have marked and then you can see them.

MR. McMAHON: I will have to examine them first.

THE COURT: Mark them for identification for the

1
2 moment.

3 THE CLERK: Militant dated
4 April 16, 1976, marked for identification as Plaintiff's
5 Exhibit 1. Young Socialist dated March 1976 marked for
6 identification as Plaintiff's Exhibit 2.

7 (Whereupon the two issues marked for identifi-
8 cation were handed to defense counsel)

9 MR. McMAHON: Your Honor, if we could limit the
10 purpose for which these are being introduced as not
11 including any reference to the content thereof, other-
12 than that, I would really like to know what purpose these
13 are being offered as an exhibit in this case.

14 MR. JORDON: These are being offered as just as
15 examples. They are recent issues of the newspapers
16 which are the subject matter of this case, and they are
17 simply being offered to the Court as an example of what
18 kind of publications we are talking about.

19 MR. McMAHON: I really don't see any need for
20 putting the actual papers into the record, and there-
21 fore, I object to them, your Honor.

22 THE COURT: Well, I will reserve decision on it.
23 We will take that up later. We will leave them for
24 identification at the moment.

25 MR. JORDON: All right, your Honor.

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Q Now, Miss Wright, would you take a look, please,
at Plaintiff's Exhibit 1 for identification, Militant.

Have you had occasions to review this issue of the Militant
previously?

A Yes.

Q Would you say it is a typical issue of the
Militant?

A Yes, it is.

Q Now, would you know look at this copy of the
Young Socialist, Plaintiff's Exhibit 2. (handing to witness)

Have you had occasion to review this issue of the Young
Socialist previously?

A Yes.

Q Would you say it is a typical issue of the Young
Socialist?

A Yes, it is.

MR. JORDON: Well, your Honor, I offer these
exhibits 1 and 2 into evidence.

MR. McMAHON: I repeat my former objection, your
Honor.

THE COURT: Well, I will reserve decision, and
we will talk about that later as we go along.

MR. JORDON: All right, your Honor.

Q Now, Miss Wright, where do you obtain the copies

1
2 of the Militant and the Young Socialist, which you sell each
3 week?

4 A From the Brooklyn office for the Socialist Worker's
5 Party. The head quarters.

6 Q That's the local Brooklyn headquarters?

7 A Yes.

8 Q Now, approximately, how many papers do you obtain
9 each week from the local group to sell?

10 A About fifteen.

11 Q And what do you do with the sale proceed from the
12 papers that you do sell?

13 A I turn it back into the office.

14 Q You turn them back into the office?

15 A Yes.

16 Q And what did you do with the unsold papers?

17 A They are either discarded or given out. Most
18 times they are discarded.

19 Q Do you retain any of the money that you receive
20 from selling the papers?

21 A No, I do not.

22 Q Do you profit financially in any way from the
23 sale of these newspapers?

24 A No., I do not.

25 Q Do other members of your local Brooklyn group

1
2 of the Socialist Workers Party sell these papers also?

3 A Yes, they do.

4 Q Did they sell them on the same basis you do, as
5 you described?

6 A Yes.

7 Q Do any of the local members profit from the sale
8 of the papers?

9 A No, they do not.

10 Q Now, where does your local group of SWP members
11 obtain the papers which you eventually obtain from the local
12 group?

13 A They are mailed to the local offices from the
14 publishers.

15 Q I see. Now, do you know what the cost of the
16 papers is to the local group? Do you know what the publisher
17 charges the local group for the papers?

18 A Yes. It's seventeen cents per copy.

19 Q And is that for the Militant and the Young
20 Socialist? Is it the same price for both?

21 A No, I believe the Militant is fifteen cents per
22 copy.

23 Q And The Young Socialist --

24 A No, I'm sorry. I was getting confused. The
25 Militant is seventeen cents, the Young Socialist is fifteen cents.

BEST COPY AVAILABLE

Q Now, does your local Brooklyn group normally sell all of the papers which it purchases from the publisher?

A Not always.

Q And what does the local group do with the unsold papers?

A Throw them out, usually, or give them away.

Q Now, does the local group sell enough papers each week to cover the cost of purchasing the papers in bulk from the publisher?

A Most times, yes.

MR. MCMAHON: I see no relevancy in this line of questioning, your Honor.

MR. JORDAN: Your Honor, in the previous proceedings in this case, the defense has made an issue of whether the plaintiffs profit from the sale of these papers, either directly or indirectly, and this is the subject of this line of questioning. I have only a couple more questions on it.

THE COURT: I can disregard it if I find it's irrelevant, Counsel.

Q Now, Ms. Wright, in the weeks when the sale proceeds of your local group from the newspapers exceed the cost of the papers from the publishers what happens to the excess money?

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Wright - direct

14A

A It goes towards further publications, further
paying for getting out our ideas, leaflets and brochures.

Q Leaflets and brochures distributed free?

A Distributed free.

(continued next page

1 1

Wright - direct

15

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Q Now, Miss Wright, would you describe for us
3 please, the method which you use in selling the Militant and
4 the Young Socialist newspapers?

5

A Well, I walk up to people on a one to one basis,
6 and try to talk to them about the contents of the paper and
7 about our ideas, and I ask them if they are interested. If
8 they are, then I make a sale, and they will give me twenty
9 five cents and I will give them a paper. If they are not
10 interested, I will walk over to someone else.

11

Q And in the course of making these sales or trying
12 to make these sales, do you get into discussions with the
13 people you are trying to sell them to?

14

A Yes.

15

Q And what is the subject of these discussions?

16

MR. MCMAHON: Again I object to the relevancy,
17 your Honor.

18

THE COURT: Well, I will take it on the same
19 basis.

20

A We get into discussions about our ideas about
21 socialism and how we are trying to bring it about here in the
22 United States peacefully and legally.

23

Q Do you get into discussions about articles in
24 the newspapers?

25

A Yes. About current events, things that are going

on around the country today, and we try to convince them of our ideas and perspectives.

Q All right. Now, have you had occasion to observe other members of the Socialist Workers Party selling The Militant and the Young Socialist?

A Yes, I have.

Q How does their method of selling compare with yours, as you just described it?

A It's the same.

Q Now, for approximately how long have you been selling the Militant and the Young Socialist in the manner you just described?

A For about three years.

Q Would you describe for us, please, some of the places in which you have sold or attempted to sell copies of The Militant the Young Socialist?

A On the streets, and on campuses.

Q Now, based on your experience, does it make any difference whether you are selling papers indoors or outdoors?

A Yes.

Q What is the difference?

A On bad days when it's raining, it's very difficult to sell papers outside or to get people to stop and discuss our ideas. Inside, in a subway or in closed area, it's

a lot easier to talk to people and sell the paper. When the weather is good, it's a lot easier to sell inside.

Q Have you had occasion to sell copies of The Militant and the Young Socialist in subway stations in New York City?

A Yes, I have.

Q Based upon your experience doing that, are subway stations effective as places to sell the papers?

A Yes.

Q Does the effectiveness of selling in subway stations depend on the weather?

A Yes.

Q Now, over what period of time, Miss Wright, did you sell papers from time to time in subway stations?

A From January to December of 1974.

Q did there come a time in early December of 1974 when you entered the Franklin Avenue IRT station in Brooklyn for the purpose of selling copies of The Militant?

A Yes, I did.

Q Did you sell any papers on that occasion?

A Yes, I did.

Q Did anything unusual happen on that occasion?

A Yes. I was approached by a policeman.

Q And what did the policeman say to you?

1 A He told me that I couldn't sell the paper in the
2 subway.

3 Q And how did you respond?

4 A I told him I thought it was my democratic right,
5 my right to freedom of speech to sell the paper there.

6 Q What did he say then?

7 A He said, "No," I couldn't sell it.

8 Q What happened next?

9 A A gentleman came up to me and asked me if he
10 could buy the paper and the policeman told him he couldn't
11 buy it from me because I couldn't sell the paper there.

12 Q And did you make that sale?

13 A No, I didn't.

14 Q Did the policeman say anything to you concerning
15 a ticket?

16 A Yes, he did. He told me if I continued to sell,
17 that I could be given a summons.

18 Q What did you do then?

19 A I left the subway station.

20 Q Have you sold newspapers in the subway stations
21 since that time?

22 A No, I have not.

23 Q Do you wish to resume selling newspapers in the
24 subway stations?

1 5 Wright - direct 19

2 A Yes, I do.

3 Q Why do you wish to sell, resume selling news-
4 papers in subway stations?

5 A To get out the ideas of socialism , and to talk
6 to people and convince them of these ideas.

7 MR. JORDAN: No further questions, your Honor.

8 CROSS EXAMINATION BY

9 MR. MCMAHON:

10 Q You say you sold Young Socialist or The Militant
11 in the subways in Janury to December, 1974?

12 A Yes.

13 Q Did you know it was aviolation of the penal law
14 of the State of New York and the rules of the Transit Authority
15 to do so?

16 A No, I did not.

17 Q Do you know the police officer that you met at
18 the Franklin Avenue station? Do you know whether he was a
19 City police officer, a Transit Police officer, and do you know
20 any identification; have you any identification for him?

21 A No, I am not sure what kind of police officer he
22 was.

23 MR. MCMAHON: Thank you, that's all.

24 MR. JORDAN: No redirect, your Honor.

25 (Whereupon the witness is excused.)

1 6

Lieberman - direct

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MR. JORDAN: The next witness is Jack Lieberman.

3

J A C K D A N I E L L I E B E R M A N , having been first

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duly sworn by the Judge of this Court, was examined and

5

testified as follows:

6

THE CLERK: State your full name, please.

7

THE WITNESS: Jack Daniel Lieberman, 170 Avenue

8

C, apartment 14H, New York, New York.

9

THE CLERK: Take the stand, please.

10 DIRECT EXAMINATION BY

11 MR. JORDAN:

12

Q Are you the same Jack Lieberman who is a plaintiff

13

in this case?

14

A Yes.

15

Q Are you a member of any political party?

16

A Yes. The Socialist Workers Party.

17

Q And do you belong to a local group of that party?

18

A Yes. The Chelsea local.

19

Q Would you describe for us, please, some of the

20

activities which you do in support of your party?

21

A We distribute campaign literature; give out other

22

material on our viewpoint on world-wide and nation-wide events,

23

also newspapers, also run candidates for office.

24

Q All right. Now, what is your purpose in selling

25

The Militant and Young Socialist newspapers?

1 7
2 A To teach people what our socialist ideas are as
3 a vehicle to getting into discussions with people about the
4 various topics that are written about in the newspapers, and
5 for, you know, winning them over to our perspective.

6 Q All right. Now, when you sell these newspapers,
7 do you retain any of the sale proceeds?

8 A Personally?

9 Q Yes.

10 A No.

11 Q Did you hear Ms. Wright's testimony concerning
12 how she obtains copies of the Militant and Young Socialist to
13 sell, and what she does with the sale proceeds and unsold
14 papers?

15 A Yes.

16 Q How does her description compare with the way
17 you obtain papers to sell, and what you did with the sale pro-
18 ceeds and unsold papers?

19 A It's the same.

20 Q Did you hear Ms. Wright's testimony how her local
21 group in Brooklyn obtained copies of the papers from the
22 publisher, and the cost of them?

23 A Yes.

24 Q How does her description of it compare with the
25 setup in your local group?

A It's identical.

Q Now, Mr. Lieberman, when did you first begin selling copies of The Militant and Young Socialist?

A In 1969; late 1969.

Q Have you sold copies of these papers continuously since then?

A Yes.

Q Approximately how many papers a week do you sell?

A Currently, about 40. Thirty to forty.

Q Now, do you use the New York City subways for transportation purposes?

A Yes.

Q Approximately how often?

A Two to four times a day.

Q And for approximately what length of time have you been using the subways on that basis?

A For almost the past four years, since I have moved back to New York.

Q Have you ever had occasion to sell copies of The Militant and the Young Socialist newspapers in subway stations?

A Yes.

Q When did you first begin selling copies of these papers in subway stations?

A In the fall of 1972.

Q Sir, at this time, are you still occasionally selling copies of the newspapers in subway stations?

A No.

Q When did you stop?

A In December of '74.

Q Approximately how many copies of the Militant and Young Socialist newspapers would you say that you have sold in subway facilities?

A Well, at the time when I used to sell them in subways, my average sale was actually higher than they are now. I would estimate they were over fifty a week, and I sold over half of them in the subways. I would say about half or maybe a little over half.

Q Okay. Now, did you find that subway facilities are an effective place to sell copies of these newspapers?

A Yes.

Q Based upon your experience selling copies of these newspapers in subway facilities, and elsewhere, would you please tell us what it is about subway stations that makes them an effective place to sell the papers?

A Well, in inclement weather and in colder weather it's a dry place and a warm place to sell. During the winter with the rain and cold and snow it is almost impossible to

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Lieberman - direct

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distirbute the papers in the street. In addition, most of the people that ride the subways are working people, people who tend to be interested in The Militant and Young Socialist, and most of them wait for trains; Times Square stations where there are shops, various food concessions stands and many times they are just waiting for the train, and they want something to read. They are interested in conversing, because of that. Also, it's a good location. So, it's the weather; also, the people that drive the train -- ride the train, excuse me, and the conditions that exist, the fact that people do wait a long time for train and are interested in something to read.

Q All right. Would you describe, please, for us, your method of selling papers in the subway stations?

(continued next page)

1
2 A Yes. I will approach someone with the paper
3 and try to talk about several articles that are inside. If
4 they say they're not interested, I will go on to the next
5 individual. If they express an interest, I will try to get
6 into discussions with them about what the papers are all
7 about; have an exchange of views and discussion while we are
8 waiting for the train. Many times, if I recall that some-
9 times when people purchased and taken a look at it, and
10 perhaps read several articles, where the trains hadn't come
11 yet, and we would converse about the articles.

12 Q What are your purposes in carrying on these
13 conversations and distributing the papers?

14 A To inform people about our viewpoint, try to
15 persuade them to our viewpoint.

16 Q Now, Mr. Lieberman, I am going to ask you some
17 questions concerning what you have observed about New York
18 City subway stations, based upon your experience selling
19 papers in the stations, and based upon your experience in
20 using the subways for transportation. Have you had occasion
21 to observe the Times Square subway station?

22 A Yes.

23 Q Would you describe that station for us, please.

24 A Yes. It's very spacious. It has several
25 subway lines that run in it; long corridors, large shopping

1
2 areas. It has shops in the station.

3 MR. McMAHON: I object, your Honor. I have a
4 gentleman here with the plans of the Times Square
5 station who I intend to put on, with plans which
6 actually show the dimensions and everything else, and
7 I don't think -- certainly this man is not an expert.
8 He doesn't have the plans. Where he says it's full
9 of shops, it's not full of shops.

10 THE COURT: Well, you may show your position.
11 He's entitled to say what he knows about it. Then I
12 will weigh the testimony on both sides.

13 MR. McMAHON: Thank you, your HONOR.

14 A Yes. For example, there is a record shop,
15 hot dog stand; in one of the corridors there, going toward
16 the Port Authority, there are various shops. It is a spacious
17 area, has a number of people that go through it.

18 Q All right. Now, have you had occasion to
19 observe the Grand Central Subway station?

20 A Yes.

21 Q Will you describe that station for us, please.

22 A It's similar. It has long corridors, for
23 instance, leading to the shuttle train from the Lexington
24 Avenue train; has shops also there. It has different stands
25 and also has quite a number of people that travel through it

1
2 during different hours of the day.

3 Q And have you had occasion to observe the
4 Union Square station in Manhattan?

5 A Yes.

6 Q Will you describe that one for us, please.

7 A Yes. It's very spacious, has several lines
8 that run into it, large numbers of people in the station at
9 various hours of the day, and also has various shops and
10 concession stands.

11 Q Now, apart from the stations which you have
12 just described, have you had occasion to observe other
13 subway stations which contain shopping facilities, newsstands
14 and so forth?

15 A Yes. Like Columbus Circle at 59th Street is
16 one example.

17 Q Are there other examples?

18 A Yes.

19 Q All right. Now, in the course of using the
20 subway stations for transportation and for the sale of
21 papers, Mr. Lieberman, have you had occasion to observe
22 the stations at various hours during the day?

23 A Yes.

24 Q Did you notice any variation in the number
25 of people in the subway stations at different times of the

1
2 day?

3 A Yes. There are more people at rush hour.

4 Q Have you had occasion to observe the subway
5 stations later on in the evening, for example?

6 A Yes.

7 Q And what did you notice? Did you notice any-
8 thing about the number of people in them at that time of day?

9 A Yes. There are less people there at that time,
10 although there are still some people, of course, that take
11 the subways at all hours of the day.

12 Q Now, did you notice any variation in the number
13 of people in the subway stations on different days of the
14 week?

15 A Yes. On weekdays there tend to be more people.
16 On Sundays there tend to be less. I would say even on
17 Saturdays there's less than the weekdays.

18 Q Now, in the course of observing people in the
19 subway stations, did you have occasion to notice what kind
20 of things they were doing in the subway stations?

21 A Yes. They are sitting down, reading papers;
22 sometimes they will be purchasing different items. For
23 instance, many stations have newsstands, candy stands,
24 pretzel stands inside the station, and there are people who
25 buy the stuff. The people will be carrying on conversations

Lieberman-direct

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2 in the station. Of course, in the largest stations, people
3 will be walking from one train to the other. There is quite
4 a bit of traffic and transferring at the stations. For
5 instance, at Times Square and in some of the larger stations,
6 the shops with windows, sometimes people will be looking
7 in the windows, going into the shop.

8 Q Thank you. Now, did there come a time,
9 Mr. Lieberman, in early December of 1974 when you entered
10 the IRT station at 110th Street and Broadway?

11 A Yes.

12 Q What was your purpose in entering the station?

13 A It was in the evening. I was going to the
14 movies.

15 Q And approximately what time in the evening was
16 it?

17 A I think between eight or nine o'clock.

18 Q And did you have to wait a while for the train
19 to come?

20 A Yes.

21 Q What did you do, if anything, while you were
22 waiting for the train?

23 A Well, I happened to have had some Militant on
24 me. I think it was, yes. So I showed them to some people,
25 and an officer told me to stop or he would give me a ticket,

1
2 give me a summons, at which time I stopped.

3 Q Were you attempting to sell the Militant to
4 passengers in the subway station?

5 A Yes. To people that were waiting for the train.

6 Q Approximately how many people were there in the
7 station at this time?

8 A I think about ten people or so.

9 Q Have you sold copies of the Militant and Young
10 Socialist in subway facilities since that day?

11 A No.

12 Q Have you sold copies of the Militant and Young
13 Socialist in places other than subway facilities since that
14 day?

15 A Yes.

16 Q What kind of places?

17 A On the street, on campuses, outside of large
18 public events; for instance, at Madison Square Garden when
19 there was a United Farmworkers benefit several weeks ago;
20 generally the street and on campuses.

21 Q All right. And did you notice any change in
22 the number of papers you have been selling since you quit
23 selling them in subway stations?

24 A Yes. It's lower.

25 Q Do you wish to resume selling papers in the

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subway stations?

A Yes.

Q What is the basis for that wish?

A Well, simply that it's, number one, as I said before, impossible to sell during inclement weather, and when it's very cold outside. In addition, I travel in the subway quite frequently, and it would give me an opportunity to reach more people with my ideas; carry on discussions. Many times I am traveling so much that I don't have time on the street to show the paper to someone. I would have the time on the subways and for the other factors, I gave you. Simply, the people on the subway, working people, are interested in the paper. These people are generally waiting for the train, have time, want something to read or are looking to converse.

Q Thank you. Now, did it ever occur to you to sell your newspapers to a newsstand in the subway stations and let the newsstand sell them to the public?

A Yes. They really would not accomplish our purpose. That is, we are not a publisher. We are not primarily selling all kinds of papers. The primary purpose of selling the paper is to reach people with our ideas, and the reason why we rely on a one-to-one sale is so we can converse with people, come into contact with them, find out

who they are, let them know who we are. We can get out our ideas. It's not like a commercial enterprise. We are not primarily a publication company interested in distribution. We want to reach people with our ideas, and we found that the subway context is much more effective in doing that.

All right. Now, Mr. Lieberman, what was your purpose in initiating this lawsuit?

A To secure my right to sell on the subways.

Q Now, before you started this lawsuit, did your attorney have any contact with the subway authority?

A Yes.

Q And how was that contact made?

A Through a letter.

Q Have you seen a copy of that letter?

A Yes.

Q I have here a letter dated January 28, 1975, two-page document. I ask that it be marked Plaintiff's Exhibit 3 for Identification, please.

THE CLERK: Two-page letter dated January 28, 1975, marked for Identification as Plaintiff's Exhibit 3.

MR. McMAHON: I have no objection to this going into evidence, provided our reply also goes into evidence.

MR. JORDON: Yes. I have that on next.

1
2 Q Mr. Lieberman, I hand you Plaintiff's Exhibit
3 3 and ask you to look at it.

4 (Handing document to witness.)

5 Q Now, have you looked it over?

6 A Yes.

7 Q Is that the letter which you just referred to,
8 which your attorney sent to the subway authorities?

9 A Yes.

10 MR. JORDON: Your Honor, I offer this letter
11 into evidence.

12 THE COURT: Mark it.

13 THE CLERK: Two-page letter previously marked
14 for Identification as Plaintiff's Exhibit No. 3 now
15 received in Evidence.

16 (Continued on next page.)
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2 Q Now, Mr. Lieberman, to your knowledge, did your
3 attorney receive a response to the letter which you just
4 looked at, Plaintiff's Exhibit 3?

5 A Yes.

6 Q Did you see that response?

7 A Yes.

8 MR. McMAHON: No objection.

9 Q I have here a one-page letter dated February 13,
10 1975, which I hand to you, Mr. Lieberman, and ask you to
11 look it over.

12 (Handing document to witness.)

13 Q Have you looked it over? .

14 A Yes.

15 Q Is that the letter which you just referred to
16 the I received in response to Plaintiff's Exhibit 3? .

17 A Yes.

18 MR. JORDON: I offer this letter into evidence
19 your Honor.

20 THE COURT: I take it there is no objection.

21 MR. McMAHON: No objection.

22 THE COURT: Mark it.

23 THE CLERK: One-page letter dated February
24 the 13th, 1975, received in Evidence as Plaintiff's
25 Exhibit No. 4.

MR. JORDON: No further questions.

CROSS-EXAMINATION

BY MR. McMAHON:

Q Mr. Lieberman, you said you were stopped by a Policeman at the 110th Street station. Was that the Seventh Avenue line or Lexington Avenue?

A Seventh.

Q Do you know if there was any concessions or stores or stands on that station?

A Yes, there is one.

Q What is that?

A There is a candy -- a newspaper stand.

Q Was it open?

A At that time, I don't think it was. It's open generally during the day, not in the evening.

Q But when you were there it was not open?

A No. Not at that time.

Q You said that you waited for a train. How long did you wait?

A Must have been about 15 minutes.

Q What hour was this?

A About nine o'clock.

Q Nine o'clock in the evening.

During the rush hours, how long do you think you wait

1
2 for a train?

3 A Generally shorter.

4 Q Shorter. You said that people stand and wait.
5 Is there seats on every station for people to wait?

6 A Most of the stations. Of course there are very
7 few seats. A lot of times people have to stand to wait,
8 which is less comfortable.

9 Q You say that you agreed with Ms. Wright that the
10 price that you paid for these newspapers, the Young Socialist,
11 I believe is 17 cents, and 15 cents is for the Militant?

12 A No. It's the opposite it. 17 cents for the
13 Militant, 15 cents for the Young Socialist.

14 Q Could you -- you sell it, though, in each case
15 for 25 cents?

16 A Yes.

17 Q Now, the difference between what you pay for
18 it and what you sell it for, if you had expenses, could you
19 take that money out to pay your expenses?

20 A No.

21 Q You don't have control over that money then?
22 It's really not your money?

23 A No. It's generally given into cover --

24 Q Is it -- given means that you have some sort
25 of control that you can give.

1
2 A No.

3 Q Then you really don't control this. You are
4 selling this and giving the money back to them, and your
5 services are completely voluntary; is that it?

6 A Certainly the sales are voluntarily. There is
7 no whip cracking down on me saying I have to sell the papers.

8 Q So you have absolutely no monetary interest in
9 this at all?

10 A No. Not at all.

11 Q You said you have been selling it in the subway
12 since the fall of 1972. Do you know there was a prohibition
13 in the Penal Law of the State of New York, and in the rules
14 of the Transit Authority with respect to prohibiting such
15 sales?

16 A No. I have heard of people being stopped, and
17 the one time a Police Officer talked to me. Many times
18 officers have seen me in the station, have been standing
19 right next to me and didn't say anything.

20 Q You didn't know about the law, and didn't know
21 about the rules? That is my question.

22 A No. I wasn't sure there was a specific ruling.
23 As a matter of fact, I conversed with officers at different
24 stations at different times.

25 Q In one instance where you were stopped, he did

not give you a summons?

A No.

Q He did not arrest you?

A No.

MR. McMAHON: Thank you. That's all.

MR. JORDON: Just a couple of questions on redirect.

REDIRECT EXAMINATION

BY MR. JORDON:

Q On the instance when you were stopped by the officer in December of 1974, Mr. Lieberman, did the officer say anything concerning a ticket?

A Yes. He said that he would give me a ticket if I didn't stop selling.

MR. JORDON: Thank you. No further questions.

MR. McMAHON: No further questions, your Honor.
(Whereupon, the witness was excused.)

MR. JORDON: Plaintiffs rest, your Honor.

MR. McMAHON: Your Honor, I move to dismiss on the basis of the law and the facts in this case, that they have not sustained any ground for other relief sought.

THE COURT: What is the Penal Law section you refer to?

MR. McMAHON: I will hand it up, your Honor.

1 Section 240.35, Subdivision 7.

2 THE CLERK: That's Sub-7. That's right here.

3 THE COURT: What do you say about the law,
4 counsel?

5 MR. JORDON: Well, your Honor, our position is
6 that in the first place the statute only prescribes
7 certain loitering by individuals who are not speci-
8 fically authorized to do so.

9 Now, as you can see from the exchange of
10 correspondence, Plaintiff's Exhibit 3 and 4, essen-
11 tially what the plaintiffs are seeking in those
12 letters, and in this litigation, his specific authority
13 to sell papers in subway facilities. Therefore, if
14 specific authority were granted, there is nothing in
15 the statute which would conceivably make such sales
16 unlawful.

17 Secondly, our position is that if the statute
18 for any reason is construed to prohibit the kind of
19 activity which the witnesses have just testified to,
20 that the statute is unconstitutional under the First
21 Amendment.

22 Now, as your Honor will probably recall from
23 the briefs submitted on the motion for a preliminary
24 injunction, there are a number of appellate decisions
25 supporting this position. There are also many other

1 decisions construing statutes of this nature, which
2 the statutes referring to merchandise, services, as
3 not covering the sale of newspapers and similar
4 materials which are designed to promulgate ideas.
5 So, to sum up, our position is that the statute
6 doesn't prohibit what the plaintiffs seek to do,
7 unless the subway authorities continue to withhold
8 specific authority.

9 Secondly, even if such specific authority
10 is withheld, the statute should be construed, terms,
11 merchandise and services in the statute should be
12 construed, not to include political publications
13 which are sold not for personal gain, but purely for
14 the purpose of propagating ideas and views. And,
15 finally, if the statute is not so construed, it cannot
16 be constitutionally applied to the activities of the
17 witnesses, which your Honor has just heard about.

18 THE COURT: Does that conclude?

19 MR. JORDON: I will just make one more point.

20 The statute, as you can see, and also the
21 subway regulations which Mr. McMahon referred to on
22 his cross-examination, prohibits or as construed by
23 the subway authority, prohibits sales of newspapers
24 at any time or place within the subway system.

25 Now, the plaintiffs in this case could not

1 contend that they should be allowed to sell papers
2 at all times and places. We are prepared to concede
3 that there are certain places in the subway system,
4 and perhaps certain times where sale of newspapers
5 could be constitutionally prohibited. But our
6 position is, and as supported by the appellate
7 decision, is that the sale of newspapers cannot be
8 prohibited throughout the entire subway system by
9 means of a blanket ban. And since that is what the
10 statute as construed by the subway authority does,
11 and what their regulation does, that statute and
12 regulation are unconstitutional.

13 That is all I have to say in opposition to the
14 motion which Mr. McMahon just made.

15 THE COURT: What is this rule of the transit
16 people?

17 MR. MCMAHON: I have the code of rules and
18 regulations.

19 THE CLERK: 1051.

20 THE COURT: Let me see the book, counsel.

21 MR. MCMAHON: Let me find the specific one,
22 your Honor. This is the Code of Rules and Regulations
23 of the State of New York.

24 Under the Public Authority Law, the Transit Authority
25 is authorized to make rules regulating the use of the

1 transit system. When we adopt some rules --

2 THE COURT: Can you submit a memorandum on that,
3 give me the whole background and all.

4 MR. McMAHON: Yes. This is published by the
5 Secretary of State.

6 THE COURT: If you submit a memorandum giving
7 me the whole background and all.

8 MR. McMAHON: I will. These are the rules of
9 the Transit Authority, and the specific rule prohibit-
10 ing peddling is this 1051.9.

11 THE COURT: You submit the memorandum.

12 MR. McMAHON: I will find it.

13 THE COURT: Does that conclude it?

14 MR. JORDON: I have one further word in opposi-
15 tion to Mr. McMahon's motion to dismiss at this time.

16 THE COURT: Yes.

17 MR. JORDON: That is, that as your Honor will
18 recall, when this case went to the Court of Appeals,
19 the Court in its decision handed down in January of
20 this year --

21 THE COURT: Was that in the Circuit Court here?

22 MR. JORDON: Yes. This case has already been
23 to the Second Circuit once. If you will recall,
24 your Honor denied a motion for preliminary injunction
25 about a year ago, and we appealed, and your Honor

virtually dismissed the case by holding there was no subject matter jurisdiction. We appealed that decision and the Second Circuit reversed and remanded for trial. That was in January. And in doing so, I think it's fair to say they made it clear that the plaintiff's here had at least on the affidavits before the Court, then made out a prima facie case, and that the issue, principal issue for trial is whether there is any compelling need to prohibit the distribution of newspapers throughout the entire subway system at all times.

So, I would urge your Honor to take that decision of the Court of Appeals into account in weighing the motion which is now before you by Mr. McMahon.

THE COURT: Very well.

(Continued on next page.)

1 MR. McMAHON: In further argument and support
2 of my motion, your Honor, since the plaintiff has
3 rested, I might point out in his case, nowheres
4 did they indicate that it was an officer of the
5 Transit Police who in any way stopped them from
6 selling their newspapers. Since the jurisdiction is
7 founded in this court on the basis of the Civil
8 Rights statute, they have nowheres made a showing
9 that they have been bothered by a Transit Officer.

10 Secondly, they also allege in their papers,
11 jurisdiction on the basis of \$10,000 jurisdictional
12 limitation, and as he indicated on testimony by both
13 of these witnesses, there are no monetary --

14 THE COURT: May I just -- Will you submit a
15 full memorandum covering those points and the other
16 items?

17 MR. McMAHON: Yes, your Honor.

18 THE COURT: Very well.

19 MR. McMAHON: But, I have witnesses to go ahead
20 with an affirmative case, on my part.

21 THE COURT: You may do so, of course. I
22 reserve decision on your motion.

23 MR. McMAHON: My first witness, I call
24 Mr. Andrew Sharetta.

25 (Continued on next page.)

A N D R E W S H A R E T T A , having first been duly sworn by the Judge, was examined and testified as follows:

THE CLERK: Your full name.

THE WITNESS: Andrew Sharetta.

THE CLERK: Spell your last name, please.

THE WITNESS: S-h-a-r-e-t-t-a.

DIRECT EXAMINATION

BY MR. MCMAHON:

Q Mr. Sharetta, in what capacity are you employed by the New York City Transit Authority?

A Assistant Civil Engineer.

Q In what department?

A Maintenance of Way Department.

Q As to your duties, do you draw plans and other drawings of the New York subway system?

A Yes.

Q At my request, did you bring with you the plans of the Franklin Avenue station, IRT, and the 110th Street station, Seventh Avenue line?

A I did.

Q The Franklin-Avenue station is an express station; is it not?

A That is right.

Q And the 110th Street, Seventh Avenue station is

1
2 a local station; is it not?

3 A Correct.

4 Q Would you say these are typical stations for
5 an IRT express station and IRT local station?

6 A Yes.

7 Q Could you tell me what the width of the plat-
8 forms are on each of the stations. This is a drawing of
9 what?

10 A This is the 110th Street Broadway Seventh
11 Avenue line.

12 Q You are consulting an official Transit
13 Authority drawing of that station?

14 A Yes. The width of the station, in general, is
15 ten feet.

16 Q From the wall to the --

17 A To the end of the platform.

18 Q It is ten feet?

19 A Right.

20 Q Is there any part of that station where it's
21 wider?

22 A Yes.

23 Q Where is that?

24 A At the turnstiles. At the ticket booth.

25 Q Is there any mezzanine on the station?

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A No. Not in this station.

Q What is the distance from the platform to the roadbed? Do you know?

If you fell off a platform down to the roadbed, how much would you fall?

A From the platform onto the roadbed is four feet.

Q There are two steel rails from the trains running on, and that's on the roadbed?

A Yes.

Q Is there also an electrified third rail?

A Yes.

Q If somebody touched that rail, what would happen to them?

A Could be fatal.

Q Would you examine the plans for the Franklin Avenue station.

A Yes. O.K.

Q What is the width of the platform on that station?

A The width of the platform on this station is 20 feet, four inches.

Q Are there areas on that platform where the platform is a smaller width?

1
2 A Yes. Where you have your stairways, and in
3 the center of the platforms, you have smaller widths at each
4 end.

5 Q What are the widths on each side of the stairs?

6 A The side of the stairs are 5'11".

7 Q And again, the distance if you fell off a
8 platform onto the roadbed; what is the standard measurement
9 going down?

10 A It's a standard four feet from the top of
11 the platform.

12 Q Is there any concession established, shown on
13 your drawing on the Franklin Avenue station?

14 A There is a newsstand shown on the mezzanine
15 of this station.

16 Q How about the 110th Street plans?

17 A Also shows a newsstand.

18 Q And that's the only stand shown?

19 A Yes.

20 MR. MCMAHON: I would like to have these marked
21 for Identification.

22 THE CLERK: Drawing depicting the 110th Street
23 station, west branch of the IRT Broadway Seventh
24 Avenue line marked for Identification as Defendant's
25 Exhibit A.

1
2 Drawing depicting the Franklin Avenue station
3 of the Brooklyn IRT Transit Company marked for
4 Identification as Defendant's Exhibit B.

5 MR. JORDON: No objection, your Honor.

6 MR. McMAHON: I offer these in evidence.

7 THE COURT: Yes. Mark them.

8 THE CLERK: Documents marked for Identification
9 as Defendant's Exhibits A and B now received in
10 Evidence.

11 Q You also have plans of other stations?

12 A Yes.

13 Q Did you bring any typical plan of the BMT
14 express station and the local station?

15 A Yes.

16 Q Could I have those?

17 A I have -- do you want me to tell you what I
18 have?

19 Q Yes.

20 A In regard to the BMT, I have an express
21 station which is the Pacific Street station on the Broadway
22 Fourth Avenue line. I have a local station which is 23rd,
23 on the Broadway line.

24 Q Do you have typical IND and express and local
25 stations?

1
2 A Yes. I have the Jay Street-Borough Hall,
3 which is a typical IND express station, and I have the
4 Sutphin Boulevard station of the Queens IND station, which
5 is a typical local station.

6 (Indicating) This is the IND. This is the
7 BMT.

8 MR. McMAHON: May I have these marked for
9 Identification?

10 THE CLERK: Drawing depicting the Sutphin
11 Boulevard station as indicated, marked for Identi-
12 fication as Defendant's Exhibit C.

13 Drawing depicting the Jay Street station-
14 Borough Hall platform drawing, marked for Identi-
15 fication as Defendant's Exhibit D.

16 Drawing depicting the 23rd Street Broadway
17 line of the New York City Transit Authority, marked
18 for Identification as defendants Exhibit E. And
19 drawing depicting the Pacific Street station, Broadway
20 Fourth Avenue line marked for Identification as
21 Defendant's Exhibit F.

22 THE COURT: It may be proper for us to take
23 a ten-minute recess at this time, as we usually do.

24 MR. JORDON: Thank you, your Honor.

25 MR. McMAHON: Thank you.

1
2 (Whereupon, a ten-minute recess was taken at
3 12 o'clock.)

4 MR. McMAHON: Your Honor, I am offering into
5 evidence these plans of the BMT and IND express and
6 local stations.

7 THE COURT: Any objection?

8 MR. JORDON: Your Honor, I have no objections
9 to Exhibit C, D, E and F being admitted into evidence.

10 THE COURT: I grant the motion.

11 THE CLERK: Documents marked for Identification
12 as Defendant's Exhibit C, D, E and F are now received
13 in Evidence.

14 BY MR. McMAHON:

15 Q Generally, the descriptions of the width of
16 the platforms that you gave on the IRT would also be true
17 of these, except as shown on these plans, they generally
18 are 20 feet for an express platform and ten feet for a local
19 platform?

20 A That is correct.

21 Q Could you give us a general description of
22 what is the initial IRT, what is the BMT, and what is the
23 IND division?

24 A The IND division, which was the latest one,
25 was opened up in the early 30s, and that was built by the City.

1
2 The IRT and BMT, both, were in the area of early 1900s, and
3 they were built by private corporations.

4 If I may add, the IRT was the Interboro Rapid Transit,
5 and the BMT was the Brooklyn-Manhattan Transit.

6 Q And how vast an area do they cover?

7 A They cover four boroughs.

8 Q The City of New York?

9 A Of the City of New York, right.

10 Q The only borough that they don't operate in
11 is in Staten Island?

12 A Right. Although, we may even add to that.
13 They do have the Staten Island Rapid Transit now.

14 Q That's not an issue in this case.

15 A No.

16 Q And the Transit Authority does not operate the
17 Staten Island Rapid Transit?

18 A They have control of it.

19 Q They don't.

20 A They don't.

21 Q The roadbed of each of these subway stations,
22 the train passes, right?

23 A Yes.

24 Q And the roadbed has two steel rails and an
25 electrified third rail. I think that's all the questions I

1 have.

2 CROSS-EXAMINATION

3 BY MR. JORDON:

4 Q Mr. Sharetta, do you have with you drawings
5 of any other subway stations, apart from the ones which you
6 have already testified about?

7 A Yes, I do.

8 Q What stations do you have plans for?

9 A I have plans for the Grand Central station.
10 I have plans for Times Square station, and plans for Union
11 Square station.

12 Q May I take a look at those, please.

13 A Yes. Sure. This is one of three. There are
14 three portions to that. There is two of Grand Central and --

15 Q The drawings of Grand Central appear on three
16 different drawings?

17 A Yes. This would be a plan of street level.

18 Q I see --

19 A Up in the street. This is the plan of the
20 mezzanine.

21 Q And here we have the third drawing on Grand
22 Central?

23 A Which is the plan of the platforms.

24 MR. JORDON: Now, I would like to offer all
25

1
2 of these plans into evidence. Do you have any objec-
3 tions, Mr. McMahon?

4 MR. McMAHON: No objections.

5 THE COURT: Very well.

6 THE CLERK: Plans of Grand Central Station
7 received in evidence as Plaintiff's Exhibit 5.

8 MR. JORDON: And let the record show that this
9 is three separate drawings received as Plaintiff's
10 Exhibit 5.

11 THE CLERK: Correct.

12 Q Now, Mr. Sharetta, may I see the plan of Times
13 Square station, please.

14 A That's these three of Times Square. That's one
15 of three, two of them.

16 MR. JORDON: Any objection to these, Mr. McMahon?

17 MR. McMAHON: No objection.

18 MR. JORDON: All right. We have three drawings
19 of the Times Square station.

20 THE CLERK: Three drawings of the Times Square
21 station received in Evidence as Plaintiff's Exhibit
22 No. 6.

23 MR. JORDON: Did your Honor rule that these
24 are received?

25 Q Now, Mr. Sharetta, the Union Square station,

14th Street, Canarsie line.

Q How many drawings is that?

A This is just one here.

Q Now, this drawing is only a portion of the Union Square station; is that correct?

A This is only the Canarsie line. That's all Union Square. I think the other portions are not called Union Square; just 14th Street.

MR. JORDON: This one we will not use.

No further questions.

THE COURT: Is that all of this witness?

MR. McMAHON: No further questions.

THE COURT: You may step down.

(Whereupon, the witness was excused.)

(Continued on next page.)

MR. McMAHON: My next witness is Thomas Stanley.

T H O M A S E D W A R D S T A N L E Y , having first
been duly sworn by the Judge, was examined and
testified as follows:

THE CLERK: Your full name.

THE WITNESS: Thomas Edward Stanley.

DIRECT EXAMINATION

BY MR. McMAHON:

Q Mr. Stanley, in what capacity are you employed
by the New York City Transit Authority?

A Assistant Station Supervisor.

Q In what department?

A Station Department.

Q What are the responsibilities of the Station
Department?

A Basically to provide and plan for operating
control facilities for entering and exiting passengers; to
maintain on a sanitary standard of these areas, to provide
personnel to man the areas, to the sale and redemption of
tokens, the collection of this; transportation to Jay Street,
and the handling and reporting of all accidents and
occurrences. That's the basic duties of the department.

Q How many stations are there in New York?

A 461.

Q 461?

A Including Court Street.

Q Why do you include Court Street?

A They maintain it as an active station in the count for the number of stations but it's used just for filming purposes. It's considered an active station.

Where you have active transit, it's 460.

Q Is there a station supervisor or an assistant supervisor for every station?

A No, sir.

Q How many stations does an Assistant Station Supervisor cover in his area?

A The Group Assistant Station Supervisor usually covers 25 to 30 stations.

Q What areas does a Station Supervisor cover?

A A Station Supervisor covers a geographic scope in our department. We have one to two, three to four and five to eight. One and two is from 59th Street up to Manhattan, three and four is lower Manhattan and part of Queens, and five through eight is all of Brooklyn and part of Queens, and the Rockaway line. And the Station Supervisor covers -- one to two, one supervisor. Three to four, two supervisors, and five to eight, three supervisors.

Q Do you have a report of how many passengers are carried on the Rapid

1
2 Transit lines of the New York City transit line every day,
3 other than Saturday and Sunday.

4 A Yes.

5 Q Have you got them with you?

6 A Yes, I do.

7 Q Is this a report that's kept in your department?

8 A Yes, sir, we receive it in the Accounting
9 Department and we maintain it in our files. Our railroad
10 clerks take hourly readings and supply it to the Accounting
11 Department.

12 MR. McMAHON: I would like this marked for
13 Identification.

14 THE CLERK: Two pages entitled Notes on Hourly
15 Passenger Traffic Study, March 1975, marked for
16 Identification as Defendant's Exhibit G.

17 MR. JORDON: No objection.

18 MR. McMAHON: I offer this in evidence, your
19 Honor.

20 THE COURT: Mark it.

21 THE CLERK: Document marked for Identification
22 as Defendant's Exhibit G now received in Evidence.

23 Q This report shows what the approximate numbers
24 of passengers that are carried on a week day in the --

25 A Approximately three and a half million passengers

1
2 on an average week day.

3 Q What are the rush hours in the subway?

4 A Generally, from 7 o'clock a.m. to 10 a.m.,
5 and from 4 p.m. to 7 p.m.

6 Q Are there circumstances in which stations can
7 be overcrowded which can't be anticipated by the Transit
8 Authority?

9 A If there is an unusual occurrence, an accident,
10 a special event that we were unaware of that could cause
11 overcrowding, yes, but usually it's generally because of
12 some accident, fire or something of that nature.

13 Q Your department, though, if there is -- Madison
14 Square Garden has a special event, you make provisions to
15 handle the crowd?

16 A Yes.

17 Q But there are occasions where overcrowding
18 occurs that you can't anticipate?

19 A Yes.

20 Q Do you know of cases where passengers have
21 fallen to the roadbed and been injured?

22 A Yes, sir. There is a report that we receive
23 annually from the SAfety Department that indicated in the
24 fiscal year '74 - '75, 522 people fell from the platforms
25 to the roadbed.

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Q Do you have that report with you, sir?

A Yes. (Handing document to attorney.)

MR. McMAHON: I would like to have this marked
for Identification.

THE CLERK: New York City Transit Authority
Rapid Transit Public Incidents, Annual Report for the
Fiscal Year 1974-1975, marked for Identification as
Defendant's Exhibit H.

MR. JORDON: No objection.

THE COURT: Mark it.

THE CLERK: Document marked for Identification
as Defendant's Exhibit H, now received in Evidence.

Q In addition to this report which shows accidents
on the transit system, and people falling off platforms and
onto the roadbed, your department gets up reports of unusual
incidents?

A Yes. We keep a daily -- we get daily reports
from the field on what we call UO's; usual occurrences or
incidents on the station, including incidents or robberies,
and we provide a daily report that is distributed throughout
the Authority.

Q Do you have some of those daily reports with
you?

A Yes, I do. Tuesday, May 4th through Friday,

1
2 May 7th, inclusive.

3 MR. McMAHON: I won't take them all, but I
4 will take the top ones. I would like to have this
5 marked for Identification.

6 THE CLERK: Two-page report entitled Consolidated
7 Summary of Station Operations Covering 24-Hour Period,
8 Ending at 11:59 P.M., Day, Friday, Date 5/7/76, marked
9 for Identification as Defendant's Exhibit I.

10 MR. JORDON: No objection.

11 MR. McMAHON: Offer this in Evidence.

12 THE COURT: Mark it.

13 THE CLERK: Document marked for Identification
14 as Defendant's Exhibit I now received in Evidence.

15 MR. McMAHON: That's all I have of this witness.

16 THE COURT: Any questions?

17 MR. JORDON: No cross, your Honor.

18 THE COURT: You may step down.

19 (Whereupon, the witness was excused.)

20 MR. McMAHON: I was having another witness that
21 I had planned to put on next, but he hasn't arrived
22 as yet. So I'm going to take Mr. Peter Cilla as
23 the next witness, your Honor.

24 THE CLERK: Face the Court, please, and raise
25 your right hand.

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2 P E T E R C I L L A , having first been duly sworn by
3 the Judge, was examined and testified as follows:

4 THE CLERK: Your full name.

5 THE WITNESS: Peter Cilla.

6 DIRECT EXAMINATION

7 BY MR. McMAHON:

8 Q Mr. Cilla, what is your position with the Transit
9 Authority?

10 A Director of Concessions.

11 Q How long have you been employed by the Transit
12 Authority?

13 A 25 years.

14 Q In what department, sir?

15 A Department of Real Estate and Concessions.

16 Q Is there a distinction between the real estate
17 and the concessions?

18 A There is now -- one concession is underground
19 jobs, and the real estate is above the ground shops.

20 Q On how many stations --

21 You heard Mr. Stanley testify that there are 460
22 active stations on the transit system?

23 A Yes.

24 Q On how many stations are there concessions?

25 A Approximately 59.

1
2 Q Did you make up a report for me as to the
3 inventory for rented concession space?

4 A Yes, I did.

5 Q This is the report (indicating)?

6 A Yes.

7 MR. McMAHON: Mark it for Identification,
8 please.

9 THE CLERK: Booklet entitled Inventory of
10 Rented Concession Space, BMT, IRT and IND line, marked
11 for Identification as Defendant's Exhibit J.

12 MR. JORDON: No objection.

13 MR. McMAHON: I offer this in Evidence, your
14 Honor.

15 THE COURT: All right.

16 THE CLERK: Document marked for Identification
17 as Defendant's Exhibit J now received in Evidence.

18 Q Mr. Cilla, referring to this report, how many
19 concessions spaces would be on the Grand Central Station?

20 A Be on the Grand Central Station?

21 Q How many concession spaces do you have rented
22 on the Grand Central Station?

23 A The Grand Central Station, including the
24 shuttle area?

25 Q Would you count the number of concession spaces

on the report that you have on the Grand Central.

A The Grand Central Station, we have one donut shop.

Q I would -- Just the total number. Just count how many.

A Twelve units.

Q Do you believe that you have other stations in the subway with more than that?

A No, sir.

Q In any event, this shows what the concession space is?

A This would be the inventory of registered concession space.

Q Does this report include newsstands?

A No.

Q Who is the contractor for newsstands?

A Ancorp Services, Incorporated.

Q Does Ancorp, Incorporated have an exclusive right to sell newspapers and periodicals on the transit system?

A Yes, they do.

Q By contract?

A By contract.

Q Did you prepare a report for me as to the

1
2 location of the newsstands on the New York City transit
3 system?

4 A Yes, I did.

5 Q Is this the report (indicating)?

6 A That's it.

7 MR. McMAHON: I offer this for Identification.

8 THE CLERK: List of Ancorp, Inc. newsstands
9 marked for Identification as Defendant's Exhibit A.

10 MR. JORDON: No objection.

11 Q Could you tell me what the numbers here signify?

12 A That is the numbers that the Ancorp people
13 use.

14 Q For identification of it?

15 A Yes.

16 (Continued on next page.)
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Pahb

MR. McMAHON: I offer this in Evidence, your Honor.

THE COURT: Mark it.

THE CLERK: Document marked for Identification as Defendant's Exhibit K now received in Evidence.

Q How many active newsstands are there on --

A 162.

Q If these plaintiffs wanted a newsstand made available to them, could they obtain a newsstand?

A If they go through Ancorp, I believe they could.

Q Do you know whether Ancorp wrote a letter indicating that people could have a newsstand made available for them?

A I believe I saw one. I saw a letter to that effect.

THE CLERK: Letter dated March 6, 1975, mailed by Ancorp National Services, Inc. to Hon. John Deroos, marked for Identification as Defendant's Exhibit L.

MR. JORDON: No objection.

MR. McMAHON: Offer in Evidence.

THE COURT: Mark it.

THE CLERK: Document marked as Defendant's Exhibit L for Identification now received in Evidence.

Q Of the 460 stations of the New York City Transit

System, would you say that relatively few of them have concession areas that are rented?

A Well, there is only -- I told you before, there was about 59 stations.

Q 59 stations out of 460?

A Right.

Q Do you or to your knowledge, does the contractor or the newsstand, in any way, censor the newspapers or periodicals sold at these newsstands as to their political contents?

A No, they don't.

Q And you don't?

A No.

Q Do you know anybody in the Transit Authority that does?

A Nobody.

Q How much revenue does the Transit Authority derive from the newsstands?

A \$250,000.

Q And how much does the Transit Authority derive from all the concessions?

A Between seven million dollars and eight million dollars a year. It is around that figure.

Q Is anyone permitted to come on the transit line and sell products, including newspapers, without a

1
2 concession contract from the Transit Authority?

3 A No, sir.

4 Q To your knowledge, do people sell products
5 on the Transit Authority without permission to?

6 A Yes. I know they do.

7 Q Does this affect the concessionaires?

8 A If they sell the same lines of items like
9 flowers, belts, whatever.

10 Q Do you ever receive complaints what conces-
11 sionaires?

12 A Yes.

13 Q Only where they are selling these same products?

14 A Usually, the same product. Sometimes others,
15 too, because of the crowds that gather around.

16 Q Do you or your department have personnel on the
17 stations of the Transit System to supervise?

18 A No.

19 Q In your opinion, if petitioners and others were
20 allowed to enter upon the Transit System to sell newspapers,
21 would that affect the newsstand concessionaires and other
22 concessionaires?

23 MR. JORDON: Objection, your Honor. This is
24 asking for an opinion. The question asked for an
25 opinion, and the witness is not qualified as an expert.

He is asking for opinion testimony here.

THE COURT: Find out what his background is on.

Q Mr. Cilla, you are the Director of Concessions?

A Yes.

Q You are the person who supervises all the concession contracts in the Transit Authority?

A That's correct.

Q You have been there 25 years?

A That's right.

Q When the concessionaires complain to you when people are soliciting on the station, you meet and talk individually with the concessionaires?

A Oh, yes.

Q You negotiate their contracts with them?

A That is true.

Q So you can make an opinion as to whether or not their interest would be adversely affected by people selling newspapers on the subway?

A It would affect the business, yes.

Q I ask again, if petitioners or others were allowed to enter upon the Transit System to sell newspapers, would that affect the newsstand concessionaires and other concessionaires?

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2 MR. JORDON: Renew my objection, your HONOR.
3 This is not the scientific or specialized knowledge
4 witness. The only thing, this is referred to in
5 Rule 702 of the Rules of Order as being proper of
6 subject of expert testimony. The witness is being
7 asked for an opinion as to the effects of selling
8 these newspapers, upon news dealers in the subway
9 system. This is not a proper subject of expert
10 testimony. He has not testified that he has had
11 any complaints concerning the sale of newspapers in
12 the subway system, and simply has had no basis laid,
13 no foundation laid for this type of speculative opinion
14 that this witness is being asked to give. He is
15 being asked to testify as to what would have been
16 the conditions which prior testimony shows he has
17 never before experienced.

18 THE COURT: Objection is overruled.

19 MR. McMAHON: Thank you, your Honor.

20 Q Mr. Cilla, concessionaires have complained to
21 you?

22 A Yes.

23 Q About the people soliciting in the subway?

24 A That is correct.

25 Q Are there any other concessions on the Franklin

1
2 Avenue Station IRT?

3 A There might be just a newsstand. Nothing
4 else.

5 Q Are there any concessions on the 110th Street
6 station IRT, Seventh Avenue line?

7 A Probably one newsstand, and you want to consider
8 the advertising concession?

9 Q Do you consider it an advertising on the
10 wall?

11 A All advertising is a concession item, yes.

12 Q But it's not a space item.

13 A No. Not a space item.

14 Q Are you familiar with the Port Authority Bus
15 Terminal on Eighth Avenue between West 40th and West 41st
16 Street, Manhattan?

17 A Yes.

18 Q When were you last at the bus terminal?

19 A Three weeks ago, I believe.

20 Q How many stores or concession units is there
21 in that terminal?

22 A Roughly speaking, I would say about 30. 30
23 units.

24 Q On three floors, did you say?

25 A And I think there's parking on the roof, if

1
2 I recall.

3 Q Is there -- in your opinion, is there any
4 place in the subway that is comparable to the Port Authority
5 Terminal, as far as concessions go?

6 A No.

7 Q What kind of concessions are found in the
8 Port Authority?

9 A Practically all types. You have donut shops,
10 snack bars, sit-down restaurants, bowling alleys, two OTB
11 betting parlors, a perfume shop, drug store, ladies wear,
12 mens wear.

13 Q Bars, too, that sell liquor?

14 A Yes.

15 Q Is there any bowling alley in the subway?

16 A No, sir.

17 Q Any OTB parlors in the subway?

18 A No, sir.

19 Q Any sit-down restaurants in the subway?

20 A No, sir.

21 Q When you were over in the Port Authority Bus
22 Terminal, did you notice a manager's office?

23 A I think there was one on the second floor, if
24 I recall.

25 Q Did you notice a police office?

1
2 A Yes. There was a police office.

3 Q While you were in the bus terminal, did you
4 notice policemen patrolling the bus terminal?

5 A Yes.

6 MR. McMAHON: That is all the questions I have
7 for Mr. Cilla.

8 CROSS-EXAMINATION

9 BY MR. JORDON:

10 Q Mr. Cilla, I believe you testified that you
11 had sometimes received complaints from concessionaires
12 concerning sales by unlicensed vendors in the subway system;
13 is that correct?

14 A That is right.

15 Q Have you ever received a complaint concerning
16 individuals selling copies of the Militant newspaper?

17 A No, sir.

18 Q Have you ever received a complaint concerning
19 individuals selling copies of the Young Socialist newspaper?

20 A No, sir.

21 Q Now, did you testify that you either now or in
22 the past also worked in the Real Estate Department?

23 A Yes.

24 Q And did you testify that the Real Estate
25 Department covers above-ground stores as opposed to below-

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ground stores?

A True.

Q Where would those above ground stores be? Are they connected with the subway systems?

A They are connected with the old IRT and BMT lines in the stores. In the middle, they have controls in the station. They are adjacent to the controls.

Q Those are stores that are on street side?

A Outside, yes.

Q Do they include newsstands?

A Yes.

Q Did you ever have any complaint from the above-ground news dealers about people selling newspapers on the sidewalk?

A No.

MR. JORDON: No further questions.

THE COURT: Is that all of this witness?

MR. McMAHON: I have two more witnesses, your Honor.

THE COURT: You may step down.

(Whereupon, the witness was excused.)

MR. McMAHON: I have a Transit Authority Police Captain as my next witness.

THE COURT: You have a what?

1
2 MR. McMAHON: I have a Transit Authority Police
3 Captain as my next witness, and I have another witness
4 after that. I was wondering whether we are going to
5 adjourn for lunch or will we go on.

6 THE COURT: I think it might be well to adjourn
7 for lunch. We will adjourn then until say 2:15.

8 MR. McMAHON: Fine. Thank you, your Honor.

9 THE COURT: Very well.

10 (Whereupon, a luncheon recess was taken at
11 12:55 p.m.)
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1 A F T E R N O O N S E S S I O N (2:15 p.m.)

2 MR. McMAHON: Your Honor, I would like to call
3 as my nex. witness Police Captain Walter Mickulas.

4 THE CLERK: Face the Court, please, and raise
5 your right hand.

6 W A L T E R D A N I E L M I C K U L A S , having first
7 been duly sworn by the Judge, was examined and testified
8 as follows:

9 THE CLERK: Your full name.

10 THE WITNESS: Walter Daniel Mickulas.

11 THE CLERK: Take the stand, please.

12 DIRECT EXAMINATION

13 BY MR. McMAHON:

14 Q Mr. Mickulas, in what capacity are you employed
15 by the New York City Transit Authority?

16 A Transit Police Captain.

17 Q How long have you been employed?

18 A Eleven years.

19 Q Have you held the rank of Patrolman, Sergeant
20 and Lieutenant?

21 A Yes, I have.

22 Q What is the function of the Transit City Police
23 Department?

24 A To prevent crime, to apprehend offenders, to
25 aid in the passenger flow, and to provide safety for the

1
2 passengers therein.

3 Q What is the size of the Transit Police Force?

4 A Approximately 3,000 men.

5 Q Is there a transit patrolman assigned to every
6 station?

7 A No, there is not.

8 Q Do you have any charts showing the employment
9 of the members of the Transit Police Force during the various
10 hours that they are assigned to the Police Force?

11 A Yes, I do have charts concerning employment
12 of manpower.

13 Q Could I see them?

14 (Documents handed to Mr. McMahon.)

15 MR. MCMAHON: I would like these two charts
16 marked for Identification.

17 THE CLERK: Two-page assignment chart marked for
18 Identification as Defendant's Exhibit M.

19 MR. JORDON: No objection.

20 THE COURT. Mark them.

21 MR. MCMAHON: I offer this in evidence, your
22 Honor.

23 THE CLERK: Document marked for Identification
24 as Defendant's Exhibit M now received in Evidence.

25 Q These charts -- it shows that on the First

1
2 Platoon, there are 14 stations covered by two patrolmen,
3 there are 17 stations covered by one -- there are 17 patrol-
4 men covering one station each, there are 30 patrolmen covering
5 two stations, 23 patrolmen covering three stations, and so
6 on.

7 What is the hours of the First Platoon?

8 A Midnight to eight o'clock in the morning.

9 Q The Second Platoon. What are the hours for
10 that?

11 A Eight a.m. to four p.m.

12 Q This shows that, for example, that there are
13 six stations which are covered by six patrolmen. There are
14 six patrolmen covering six stations; is that correct?

15 A That's correct. That would mean 36 stations
16 involved, six men involved for 36 stations.

17 Q What are the hours of the Third Platoon?

18 A Four p.m. to midnight.

19 Q That shows there are 15 patrolman covering six
20 stations each?

21 A Right.

22 Q And there are lesser numbers, according to that
23 chart. So that there aren't patrolmen available at each
24 station to supervise plaintiffs if they are selling news-
25 papers under certain rules and regulations for the Authority?

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2 A We do not have sufficient manpower provided
3 for observation or supervision of these people.

4 Q In the event of that, a patrolman on one of
5 these platoons that is covering six stations should make an
6 arrest, that takes him away from the station; doesn't it?

7 A It does.

8 Q What happens then?

9 A His entire post will be picked up by an
10 adjoining post, which would, in effect, double the covering
11 stations at a time.

12 Q Do people peddle merchandise and newspapers on
13 the subways without permission?

14 A They do.

15 Q Do you know if passengers complain about such
16 peddling?

17 A I do.

18 Q Do you know of any other applications made
19 to the Authority for similar permission to what these plain-
20 tiffs are seeking?

21 A Yes. We have received requests to distribute
22 or peddle literature on the subway system.

23 Q Can you name any group?

24 A The Hare Krishna group, Muhammed Speaks.

25 Q Thank you.

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2 If newspapers are sold in the manner proposed by
3 plaintiffs, that is, walking about, holding newspapers and
4 engaging in a sales talk, could this interfere with the flow
5 of passenger traffic?

6 MR. JORDON: Objection, your Honor. This is
7 calling for a speculation and an opinion.

8 THE COURT: Yes.

9 You may ask him if in any situation that occurred,
10 but I will sustain the objection as to the framework
11 of the question.

12 Q If someone stands at the end of a stairway
13 where passengers are coming down to catch a train and there
14 is someone standing there holding up a newspaper and trying
15 to engage in a sales talk, could that block somebody trying
16 to reach a train?

17 A Yes, it could.

18 Q Are you familiar with the Port Authority Bus
19 Terminal on Eighth Avenue between West 40th and West 41st
20 Street, Manhattan.

21 A I am.

22 Q Do you know anything about the policing of
23 that bus terminal?

24 A Yes, I do.

25 Q Could you tell me what you know about the policing

1
2 of that?

3 MR. JORDON: Objection, your Honor. There is
4 no foundation for this. I suggest that the witness
5 has not testified as to how he knows about the
6 policing of it, whether he's observed it.

7 THE COURT: Yes. Reframe your question, counsel.

8 Q Captain, have you been at the Port Authority
9 Bus Terminal?

10 A Yes, I have.

11 Q Have you seen patrolmen patrolling the area?

12 A Yes, I have.

13 Q And you spoken to superior officers of the
14 Port Authority Police?

15 A Not recently.

16 Q Not recently.

17 Do you know if there are closed circuit TVs covering
18 the Port Authority Bus Terminal?

19 A Yes. They do have.

20 Q In the subway, is there a closed circuit TV?

21 A Not at this time.

22 MR. McMAHON: Thank you. That's all I have.

23 CROSS-EXAMINATION

24 BY MR. JORDON:

25 Q Captain Mickulas, you testified that you knew

1
2 of complaints received from passengers concerning the ped-
3 dling of merchandise; is that correct?

4 A That is correct.

5 Q Do you remember specific complaints that you,
6 personally, received?

7 A I do not personally receive the complaints.
8 I served in the capacity as a Communications Officer for
9 Chief of Patrol. During that time, letters to the Chief
10 and others would be routed through me and I would investigate
11 the specific condition and prepare a reply for the Chief of
12 the Department to these people concerning the incident.

13 Q Would these be letters from passengers that
14 were concerned about something that had happened in the
15 system?

16 A Most likely, yes. Although I couldn't verify
17 what the status of the person sending the letter was.

18 Q Did you bring any of those letters with you
19 today?

20 A No, I did not.

21 Q Do you recall seeing any letters concerning the
22 sale of newspapers?

23 A Specifically, no.

24 MR. JORDON: No further questions. Thank you,
25 Captain.

(Whereupon, the witness was excused.)

MR. McMAHON: As my final witness, I would like to call Mr. Frederick Wilkinson.

THE CLERK: Face the Court, please, and raise your right hand.

F R E D E R I C K D O U G L A S W I L K I N S O N , J R . ,
having first been duly sworn by the Judge, was examined
and testified as follows:

THE CLERK: Your full name.

THE WITNESS: Frederick Douglas Wilkinson, Jr.

THE CLERK: Take the stand, please.

DIRECT EXAMINATION

BY MR. McMAHON:

Q Mr. Wilkinson, in what capacity are you employed by the New York City Transit Authority?

A I am the Executive Officer for Passenger Services at the New York City Transit Authority.

Q Pursuant to the Port Authority's law, if I may read Section 1201.

Section 1201 of the Public Authorities Law:

"The Chairman of such Board shall be the Chairman of Metropolitan Transportation Authority, serving ex officio.

"He shall be the Chief Executive Officer of

the Authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority, but eh shall be empowered to delegate any one or more of such functions or powers, including, without limitation, that of appointment, discipline, and removal of officers and employees, to one or more executive officers appointed by the Board."

Are you one of these executive officers that have been designated by the Chairman pursuant to that statute?

A I am.

Q Could you tell me, please, what your function is as Executive Officer for Passenger Services?

A My function is to deal with all of these matters which relate to the delivery of our service to the passengers in terms of the comfort of the service, the reliability of the service, the courtesy of the service and the safety of the service.

Q You were aware that the Transit Authority has adopted rules regulating the rules of the Transit Authority System?

A I am.

Q One of those rules bar peddling on the New York

1
2 City Transit System. In your opinion, as such Executive
3 Officer, could you give me the rationale or the policy why
4 peddling is prohibited by rules of the Transit Authority?

5 A Well, when I think of the term peddling, I
6 think of the system solicitation and solicitation in any
7 active form in the subway system, in my opinion, is not a
8 wise course of action, because it does two basic things.
9 Number one, I think it impedes the flow of traffic, and
10 number two, I think it imposes on the passenger the obligation
11 to make decisions when confronted by a solicitor, that within
12 the system a passenger shouldn't have to make.

13 I think if a passenger wants to make a purchase of
14 something within our system, they have it right there, and
15 therefore they can go to these facilities and make their
16 purchases.

17 Q So that it would be, in essence, our passengers
18 are captives when somebody else comes around, walking throughout
19 the system peddling, not --

20 MR. JORDON: I must object, your Honor. Counsel
21 is testifying here.

22 THE COURT: Yes. That may be a conclusion.
23 If you say what he finds, and that is all.

24 MR. McMAHON: I think Mr. Wilkinson has answered.
25 I wanted to get the whole point across.

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THE COURT: You may ask him if you frame your question appropriately.

Q Well, where someone is waiting for a train, the headways and the subways are not very long; are they?

A During rush hours they average around two to three minutes.

Q And even at the longest wait in the subway --

A It would be approximately a half hour.

Q That would be the longest. That would be late in the evening?

A That is correct.

Q Is there any facilities in the Transit Authority that like in the Port Authority Bus Terminal, where they have waiting rooms with seats where people wait maybe hours for buses?

A People wait for trains on the platforms, and so some of the benches are used, but it is not an enclosed area.

Q It is not comparable to a waiting room in a railroad station?

MR. JORDON: Objection, your Honor. Counsel is asking --

THE COURT: You may say what the situation is.

Q Well, you do not have, as such, waiting rooms?

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2 A The closest thing that would have to be, would
3 be some of the elevated structures. We do have the rooms
4 where people sit. Those are semi-enclosed areas.

5 Q How many would you say could be seated there?

6 A I would take a guess. This is only a guess,
7 I just don't know exactly. I would say a maximum of nine to
8 ten people. This is the exception, rather than the rule.
9 The rule is that we don't have waiting rooms, we have platforms.

10 Q Would the solicitation of a person standing on
11 the platform waiting for a train, the primary purpose of him
12 being there --

13 MR. JORDON: Objection, your Honor, again.

14 This is testimony by counsel.

15 THE COURT: Yes. You are getting into conclu-
16 sions. You call it a primary purpose. You may ask him
17 what happened. What he notes to any situation.

18 Q What is the primary function of the New York
19 City Transit Authority in its -- what is its corporate
20 purpose?

21 A It's corporate purpose is to employ a means
22 of transporting the people that use the system.

23 Q And is the purpose of -- when the passengers
24 pay, how much do they pay to enter the transit system?

25 A They pay during the regular period, they pay

1
2 50 cents. However, for the elderly, for the handicapped,
3 during certain hours, on weekends and during certain holidays,
4 they ride the system, in the case of the buses, for half fare,
5 and in the case of the subways, they can have a round-trip
6 full fare, which effectively is a half fare each way.

7 Q So that when persons enter the Transit System,
8 they pay a fare to do so?

9 A Yes.

10 Q It's not open to the general public to walk in?

11 MR. JORDON: Objection, again, your Honor. This
12 is for the witness to testify to.

13 MR. McMAHON: I think this is pretty much --
14 you will concede that they paid fares to come in?

15 THE COURT: Probably you can almost take a
16 judicial notice that they pay fares.

17 MR. McMAHON: True. Strictly, maybe my question
18 wasn't that pertinent, but it's an obvious question.
19 That is all I meant by my statement.

20 Q When a person does pay the fare, he gets -- he
21 pays it with a token which says one fare?

22 A That is correct.

23 Q What ordinarily the man paying that fare is
24 expecting transit services; is he not?

25 MR. JORDON: I must object to that, your Honor.

jhb

Mr. Wilkinson, despite his qualifications --

THE COURT: You probably may ask him what he is entitled to.

MR. McMAHON: Yes.

Q Mr. Wilkinson, what is the person entitled to when he rides the subway?

A Well, I think the patron is entitled to a couple of those; access to the system. I think he's entitled to a situation under which if he has to wait for a train he should be able to wait for a train without being approached by people. I think he is entitled to a situation where there is no solicitation, whether it's the sale of merchandise or the procurement of handouts. Then, I think he's entitled to board the train, and I think he's entitled to ride that train without any kind of solicitation. I think he is entitled to debark from that train and to walk from that train to the exit, and not to be subject to any active solicitation. Those are the things to which I think he is entitled.

MR. McMAHON: That's all. Thank you.

CROSS-EXAMINATION

BY MR. JORDON:

Q Just a couple of questions.

Mr. Wilkinson, you have testified that one of the policies, which in your view, underlies the regulation

1
2 concerning peddling. Is that the existence of peddlers in the
3 subway system would obstruct passenger flow. Is that an
4 accurate summary of what you said?

5 A I do not recall the exact words, but the thrust
6 is an active solicitation, because in a strict sense, you must
7 think our new systems are run by people who might be peddlers
8 disposing merchandise.

9 Q What do you mean by "active solicitation"?

10 A Approaching a passenger with a request that they
11 buy something or give something or exchange something.

12 Q And your testimony was that you felt the
13 regulation was needed in order to avoid obstructing passenger
14 flow by such peddling?

15 A Not only obstructing passenger flow, but also
16 to avoid creating an environment whereby the passenger could
17 not have a right to stand on the platform and not be soli-
18 cited by any reason.

19 Q Focusing a moment on the problem of obstructing
20 passenger flow, is it not true that there are a number of
21 areas within the subway system where passengers aren't flowing?
22 That is, aren't there areas where there are lunch stands,
23 shops, shoeshine stands, corners away from corridors and
24 places of that nature where people aren't constantly flowing
25 through?

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A If you are asking me, are there concessions and stands in the subway system, I have to say, yes, but also I have to say there there is probably a flow, there is probably adjacency of a passenger flow to those stands.

Q But you aren't taking the position there are passengers flowing over every square inch of the subway system?

A Indeed, I am not, sir.

Q In fact, there are substantial areas of the subway system where passengers aren't flowing over; is that correct?

A I couldn't give you a positive answer, because I can think of some situations where during a particular commission period we have hundreds of thousands of passengers flowing, and during a non-commission period we would have very few.

Q What does that mean? "Commission period"?

A Let's say the rush hours.

MR. JORDON: All right. I have no further questions. Thank you, sir.

THE COURT: Is that all of this witness?

MR. McMAHON: That is all.

THE COURT: You may step down.

MR. JORDON: I have just a few questions on

rebuttal with Miss Patricia Wright.

P A T R I C I A W R I G H T , having been previously

duly sworn, resumed and testified further as follows:

REBUTTAL EXAMINATION

BY MR. JORDON:

Q Ms. Wright, in place of selling the Militant and Young Socialist by hand in the subway facilities, would it be an adequate substitute for you to rent a newsstand in a subway station for use in selling your papers?

A No.

Q Why not?

A Because I cannot afford it.

Q Well, do you have a job?

A Yes, I have a job.

Q How much do you earn?

A I earn about \$90 a week.

Q And do you have any money left over after you pay your basic living expenses?

A No, I don't.

Q Well, do you have any interest -- do you wish to sell copies of the New York Times, Time Magazine, and the other publications that are sold on commercial newsstands

A No. I have no interest in selling those others

Q Why not?

1
2 A Because my primary goal to selling papers is
3 to sell the Militant and the Young Socialist in order to get
4 out the ideas of Socialism, and to convince other people
5 of those ideas.

6 Q Now, if you're so interested in getting out
7 the papers and your ideas, why don't you give them away
8 instead of selling them?

9 A Because that would mean I'd have to pay for
10 them, and I cannot afford to pay for them.

11 Q In other words, if you check papers out from
12 your headquarters and give them away, what would happen?

13 A That means I would have to take money out of
14 my own pocket to pay for the papers, and I don't have -- I
15 am not able to afford to do that.

16 MR. JORDON: Thank you. No further questions.

17 CROSS-EXAMINATION

18 BY MR. McMAHON:

19 Q Miss Wright, when you went to the subway to
20 sell your papers, do you pay fare?

21 A Yes, I do.

22 MR. McMAHON: Thank you. No further questions.

23 (Whereupon, the witness was excused.)

THE COURT: Both sides rest?

25 MR. McMAHON: Yes, your Honor.

1 MR. JORDON: Both sides rest, your Honor.

2 MR. McMAHON: I renew my motion. I would like
3 to, your Honor, because of on the facts and law, the
4 plaintiffs have failed to show no right to relief.

5 THE COURT: Decision is reserved.

6 MR. JORDON: Your Honor, we left open the
7 question of whether you would receive a examples of
8 the papers we are talking about.

9 THE COURT: I will allow them. We received
10 statements about what the papers contained, so this
11 is certainly not objectionable.

12 -MR. McMAHON: Your Honor, I would also like to
13 move to dismiss, since the jurisdiction here is
14 founded on this being a Civil Rights case. While I
15 realize the --

16 THE COURT: Will you do this, counsel. I have
17 various questions. Include anything in your memorandum
18 that you submit, so I will have the whole presentation
19 by you, and that would also apply to the plaintiff's
20 attorney, if you have anything to submit.

21 MR. JORDON: All right, your Honor. Should we
22 set a timetable for submitting memoranda?

23 THE COURT: Tell me how much time you need.

24 MR. JORDON: When the Court of Appeals remanded
25 this case, they demanded an expeditious trial, and that's
26 already been four

1 months, so I urge your Honor to let us get our briefs
2 in promptly, so that we can get the case decided at
3 your earliest convenience.

4 THE COURT: What do you say?

5 MR. JORDON: In light of the fact that this
6 case has already been so prolonged, to set a fast
7 schedule for the post-trial briefs in order that you
8 will have an opportunity to decide this at your
9 earliest possible convenience --

10 THE COURT: I want to be reasonable, counsel.
11 Off the record.

12 (Whereupon, an off the record discussion was
13 held.)

14 MR. McMAHON: I would like at least two weeks,
15 your Honor.

16 THE COURT: Well, that is normal.

17 MR. JORDON: I am prepared to submit either
18 first or second. It doesn't matter to me. I can
19 submit it in two weeks.

20 THE COURT: Well, do you want to rely on his
21 brief; is that it?

22 MR. JORDON: Are you asking for his first, your
23 Honor?

24 THE COURT: No. Normally, both sides submit at
25 the same time.

1 MR. JORDON: I would like to respond to his
2 brief.

3 THE COURT: Suppose we have two weeks, and
4 one week for reply. Is that all right?

5 MR. JORDON: That is fine.

6 THE COURT: All right.

7 MR. JORDON: Thank you.

8 MR. McMAHON: Thank you.

9 * * *

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370 Jay Street
Brooklyn, New York 11201

Chief of Transit Police
370 Jay Street
Brooklyn, New York 11201

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places. The Militant is a socialist news weekly which in recent
years has supported the ideas, policies and candidates of our
clients' party. It sells for 25 cents.

Our clients wish to sell copies of The Militant from
time to time in some of the larger subway stations such as
Times Square and Union Square. The manner of selling would be
for an individual to display the papers by hand, and to converse
with persons who pause to purchase or look. Naturally, our
clients are willing to observe any reasonable regulations as to
the precise time and place of selling within the stations, if
any such regulations exist.

We have advised our clients that the First Amendment
guarantees them the right to sell their papers in person in the

New York City Transit Authority
Chief of Transit Police

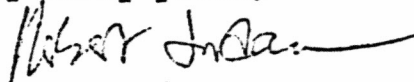
- 2 -

Jan. 28, 1975

subway stations, and they desire to do so immediately. However, some of our clients have recently attempted to sell The Militant in the stations and have been ordered to stop by transit police officers.

Our clients request that you instruct the transit police officers not to interfere with them as they sell their papers in the manner described above. As our clients desire to avoid further incidents with the officers, they will not attempt to sell papers in the stations for the time being. Please give this matter prompt attention and notify us of your action.

Very truly yours,


Herbert Jordan

HJ:sw

bc: Mr. Frank Boehm
Socialist Workers Party
706 Broadway, 8th Floor
New York, New York 10003



New York City
Transit
Authority

370 Jay Street Brooklyn, New York 11201 Phone 212 852-5000

David L. Yunich
Chairman and
Chief Executive Officer

Lawrence R. Bailey
Leonard Braun
William L. Butcher
Donald H. Elliott
Justin N. Feldman
Harold L. Fisher
Mortimer J. Gleeson
Edwin G. Michaelian
Eben W. Pyns
Constantine Sidamon-Eristoff

John G. deRoos
General Counsel

February 13, 1975

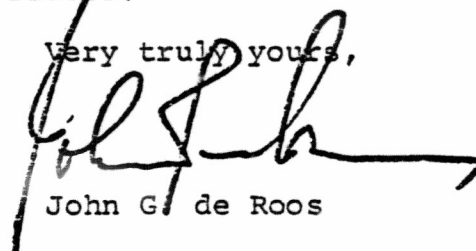
Herbert Jordan, Esq.
Rabinowitz, Boudin & Standard, Esqs.
30 East 42nd Street
New York, N. Y. 10017

Dear Mr. Jordan:

This is in reply to your letter of January 28th in which you request that we advise our Transit Police not to interfere with the sale of "The Militant" by your clients in certain subway stations.

The sale of "The Militant" in the manner you propose is prohibited by Transit Authority regulations. (21 NYCRR Part 1051.) Due to the confined space in the subways, a free flow of passenger traffic must be maintained in order to secure the safety of our riders. Your proposed method of sale would interfere substantially with this traffic flow, and thereby create hazardous conditions for subway riders.

Very truly yours,



John G. de Roos

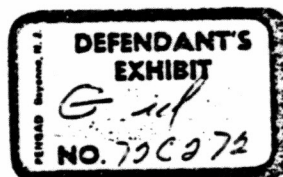
REPORT ON MONTHLY PASSENGER TURNSTILE COUNTS

MARCH 1975

The semi-annual analysis of Passenger Registration of the Rapid Transit Lines by hour was prepared for a typical weekday, Wednesday, March 5, 1975. It should be noted that the figures represent registrations rather than passengers. Therefore, the study does not reflect elementary school pupils, high school students when returning from school and during other periods when they enter through exit gates, neither does it include free riders. The total registrations include senior citizens traveling in one direction only when they deposit a token.

All registrations on the low turnstiles are shown hourly as reported by the Railroad Clerks who took hourly readings on this day. The allocation to each hour depends on the accuracy of the information supplied by the Railroad Clerks. In the case of high turnstiles, hourly readings were taken during rush hours only on stations where the high turnstiles passenger revenue represents 20% or more of the station passenger revenue. To take readings on all high turnstiles for a 24 hour period would involve an expense to the Station Department that does not seem justified.

The registrations on inter-divisional stations are shown separately. To include these on the totals of the respective divisions could be misleading, since a passenger may enter the controls on one division of such station and travel on another division at that station.



Accounting Dept.
May 6, 1975

Ref: 600-JH/AR

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Defendant's Exhibit G

COMPARISON OF TRAFFIC STUDIES BY GROUPING OF HOURS

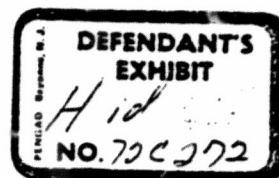
MARCH 1975 - MARCH 1974

<u>Hours</u>	<u>Wed. March 5, 1975</u>	<u>Wed. March 20, 1974</u>	<u>Net Change</u>	<u>% of Change</u>
7 A.M. - 10 A.M.	1,060,371	1,104,011	(43,640)	(3.95)
10 A.M. - 4 P.M.	840,332	862,039	(21,707)	(2.52)
4 P.M. - 7 P.M.	1,051,800	1,083,975	(32,175)	(3.09)
7 P.M. - 11 P.M.	293,271	314,586	(21,315)	(6.78)
11 P.M. - 7 A.M.	274,461	287,437	(12,976)	(4.58)
TOTALS	3,520,275	(A) 3,649,248	(128,973)	(3.53)

OCTOBER 1974 - OCTOBER 1973

<u>Hours</u>	<u>Wed. Oct. 23, 1974</u>	<u>Wed. Oct. 17, 1973</u>	<u>Net Change</u>	<u>% of Change</u>
7 A.M. - 10 A.M.	1,033,616	1,058,507	(24,891)	(2.35)
10 A.M. - 4 P.M.	865,940	867,732	(1,792)	(0.21)
4 P.M. - 7 P.M.	1,055,962	1,068,273	(12,311)	(1.15)
7 P.M. - 11 P.M.	311,036	302,152	8,884	2.94
11 P.M. - 7 A.M.	312,190	325,094	(12,904)	(3.97)
TOTALS	3,578,754	3,621,758	(43,004)	(1.19)

(A) As Adjusted for undistributed High Turnstile Registrations

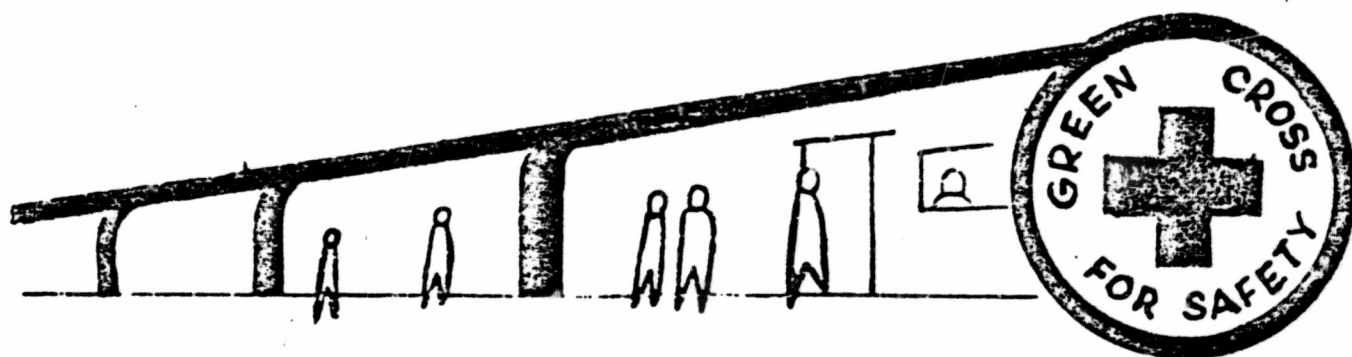


NEW YORK CITY TRANSIT AUTHORITY

RAPID TRANSIT
PUBLIC INCIDENTS

ANNUAL REPORT

FISCAL YEAR - 1974 - 1975



SAFETY DEPARTMENT

DEFENDANTS' EXHIBIT H
116a

NEW YORK CITY TRANSIT AUTHORITY

OFFICE OF THE EXECUTIVE OFFICER
LABOR RELATIONS AND PERSONNEL

From: W. B. McLaren, Executive Officer
To: All Concerned
Subject: Annual Rapid Transit Public Incidents Report--1974-1975.

The Annual Public Incidents Report for the Fiscal Year 1974-1975 presents a tabulation and summary of the total incidents which have been observed, noted and/or reported by passengers and/or our employees. It shows a continued decrease in frequency.

It must be noted, that these incidents or occurrences need not have resulted in personal injury or property damage.

We experienced an increase of 19 or 54 percent in the "Passing Between Train Cars" category. Passengers attempting to walk from one car to another when train is moving between stations is the prime cause resulting in this type of incident.

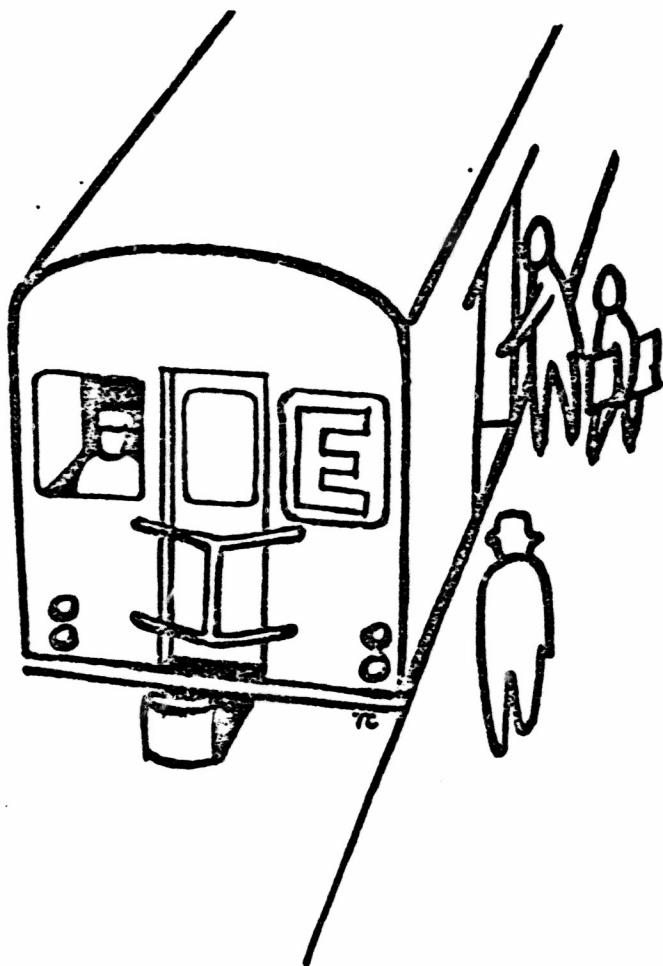
This category was one of the few to show an increase in the past fiscal year.

W. B. McLaren
W. B. McLaren
Executive Officer

C O N T E N T S

NUMBER OF PASSENGERS CARRIED.....	1
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MOST PREVALENT INCIDENTS--TRANSPORTATION (Illustrated).....	3
MOST PREVALENT INCIDENTS--STATION (Illustrated).....	4
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M NEW YORK CITY TRANSIT AUTHORITY
NUMBER OF PASSENGERS CARRIED



NUMBER OF PASSENGERS CARRIED

FISCAL YEAR 1974-1975

1,076,998,623

FISCAL YEAR 1973-1974

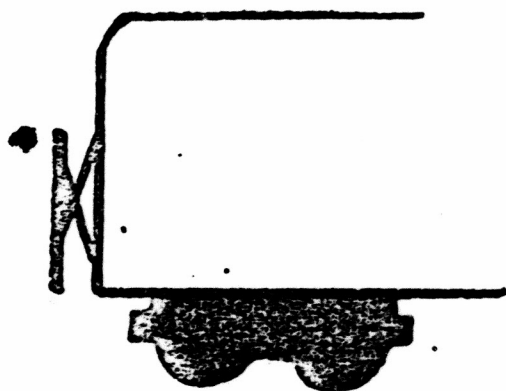
1,095,258,905

REDUCTION IN NUMBER OF PASSENGERS

18,260,282 OR 1.7%

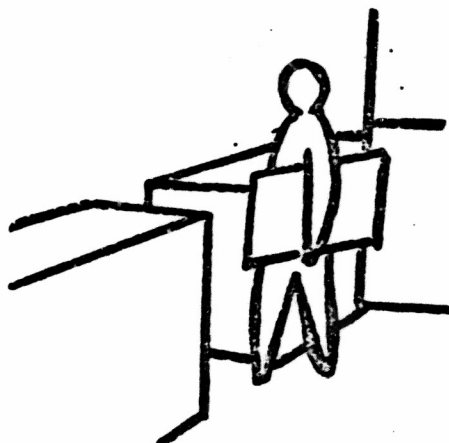
M NEW YORK CITY TRANSIT AUTHORITY
 NUMBER OF PASSENGER INCIDENTS & FREQUENCY

TRANSPORTATION DEPARTMENT



	FISCAL YEAR		
	1974-75	1973-74	DECREASE
NO. OF INCIDENTS	1,931	2,399	468
FREQUENCY	1.79	2.19	.40

STATION DEPARTMENT



	FISCAL YEAR		
	1974-75	1973-74	DECREASE
NO. OF INCIDENTS	3,425	3,753	328
FREQUENCY	3.18	3.43	.25

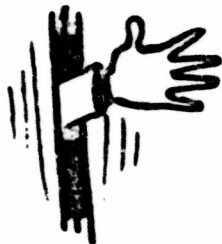
FISCAL YEAR	INCIDENTS	FREQUENCY
1974-1975	5,356	3.18
1973-1974	6,152	5.62

INCIDENTS REPORTED, ARE OCCURRENCES WHICH MAY OR MAY NOT
 HAVE RESULTED IN PERSONAL INJURY OR PROPERTY DAMAGE.

M NEW YORK CITY TRANSIT AUTHORITY

TRANSPORTATION DEPARTMENT FIVE MOST PREVALENT INCIDENTS FISCAL YEAR 1974 - 1975

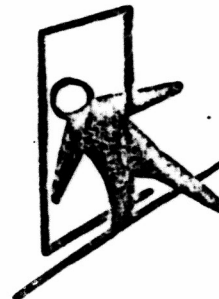
STRUCK BY DOORS (BOARDING & ALIGHTING)



3 4 6 = 1974-75

4 0 7 = 1973-74

FELL BETWEEN TRAIN & PLATFORM (SPACE)



1 4 4 = 1974-75

2 1 1 = 1973-74

THROWN--TRAIN STOPPING/ STARTING



2 3 4 = 1974-75

3 5 8 = 1973-74

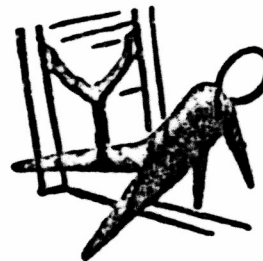
MISSILES/GLASS



2 3 4 = 1974-75

2 9 9 = 1973-74

FELL IN TRAIN (TRIP, SLIP, ETC)



2 1 9 = 1974-75

2 6 7 = 1973-74

INCIDENTS REPORTED, ARE OCCURRENCES WHICH MAY OR MAY NOT
HAVE RESULTED IN PERSONAL INJURY OR PROPERTY DAMAGE.

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M NEW YORK CITY TRANSIT AUTHORITY

STATION DEPARTMENT
FOUR MOST PREVALENT INCIDENTS
FISCAL YEAR 1974 - 1975

STAIRWAYS



2, 1 3 5 = 1974-75

2, 2 9 5 = 1973-74

FALLS ON PLATFORMS



3 2 3 = 1974-75

4 2 5 = 1973-74

MEZZANINE



1 2 3 = 1974-75

1 8 3 = 1973-74

ESCALATORS



1 7 3 = 1974-75

1 5 1 = 1973-74

1220

INCIDENTS REPORTED, ARE OCCURRENCES WHICH MAY OR MAY NOT HAVE
RESULTED IN PERSONAL INJURY OR PROPERTY DAMAGE.



NEW YORK CITY TRANSIT AUTHORITY

FISCAL YEAR - 1974-75				B O A R D I N G	FISCAL YEAR - 1973-74			
A	B-2	B-1	TOT.		A	B-2	B-1	TOT.
67	85	54	206	Caught/struck by doors	71	146	59	276
0	0	1	1	Door glass broken	0	2	1	3
3	5	3	11	Fell against train	5	10	3	18
8	13	6	27	Dragged by train	7	23	4	34
58	36	23	117	Fell between train & platform(space)	77	35	43	155
14	13	15	42	Platform to train	13	16	13	42
<u>1</u>	<u>2</u>	<u>3</u>	<u>6</u>	No Classification	<u>9</u>	<u>5</u>	<u>2</u>	<u>16</u>
151	154	105	410	T O T A L	182	237	125	544
				O N B O A R D				
A	B-2	B-1	TOT.		A	B-2	B-1	TOT.
6	23	15	44	Thrown-Train Starting	12	26	11	49
67	79	44	190	Thrown-Train Stopping	87	127	95	309
21	47	30	98	Thrown-Train lurched/curve/etc.	24	55	35	114
26	14	14	54	Passing between train cars	13	12	10	35
46	96	77	219	Fell in train (slip,trip,etc.)	75	107	85	267
1	12	7	20	Car Seat	1	11	8	20
28	26	37	91	Glass Injury	35	55	42	132
6	6	6	18	Storm Door	10	5	5	20
7	4	3	14	Cab Door	2	0	4	6
10	12	14	36	Faulty Equipment (struck by)	9	9	11	29
1	0	5	6	Signs	3	3	0	6
14	12	11	37	Crowd or other passenger	19	22	21	62
57	37	49	143	Missile	62	32	73	167
<u>18</u>	<u>7</u>	<u>11</u>	<u>36</u>	No Classification	<u>11</u>	<u>17</u>	<u>11</u>	<u>39</u>
308	375	323	1006	T O T A L	363	481	411	1255



NEW YORK CITY TRANSIT AUTHORITY

FISCAL YEAR 1974-1975				A L I G H T I N G	FISCAL YEAR 1973-1974			
A	B-2	B-1	TOT.		A	B-2	B-1	TOT.
53	52	35	140	Caught/struck by doors	35	64	32	131
26	17	19	62	Train to platform	18	15	14	47
2	3	4	9	Dragged by train	4	5	3	12
13	6	8	27	Fell between train & platform(space)	22	19	15	56
<u>1</u>	<u>2</u>	<u>1</u>	<u>4</u>	No Classification	<u>2</u>	<u>2</u>	<u>1</u>	<u>5</u>
95	80	67	242	..... T O T A L	81	105	65	251

				T R A F F I C				
0	0	0	0	Collision--train/vehicle	1	1	2	4
0	0	0	0	Collision--fixed object	0	1	0	1
0	0	2	2	Deraillment(involving passengers)	14	0	5	19
59	47	33	139	Collision--person in roadway	67	59	27	153
14	18	18	50	Collision--person on platform	21	18	15	54
<u>7</u>	<u>5</u>	<u>3</u>	<u>15</u>	No Classification	<u>7</u>	<u>7</u>	<u>5</u>	<u>19</u>
80	70	56	206	..... T O T A L	110	86	54	250

..... 67R. T. MISCELLANEOUS INCIDENTS..... 99

				S T A T I O N S				
729	765	641	2135	Stairs	829	766	700	2295
118	100	105	323	Platforms	141	137	147	425
170	191	161	522	Fell/jumped to tracks	164	212	136	512
45	39	39	123	Passageways/ramps/mezz.	44	68	71	183
4	1	3	8	Toilets	2	3	7	12
46	110	17	173	Escalators/Elevators	36	107	8	151
9	8	8	25	Turnstiles-Entrance	10	12	10	32
3	4	2	9	Turnstiles-Exit	2	3	2	7
3	9	16	28	Exit Gates	8	16	13	37
12	7	10	29	Missile	19	12	12	43
16	16	17	49	No Classification	21	15	12	48
<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	Ffre & Smoke - Injury	<u>0</u>	<u>8</u>	<u>0</u>	<u>8</u>
1155	1250	1020	3425	..... T O T A L	1276	1359	1118	3753



NEW YORK CITY TRANSIT AUTHORITY

TEN YEAR COMPARISON OF PASSENGER INCIDENTS AND FREQUENCY RATES
FISCAL YEARS 1965/1966 - 1974-1975

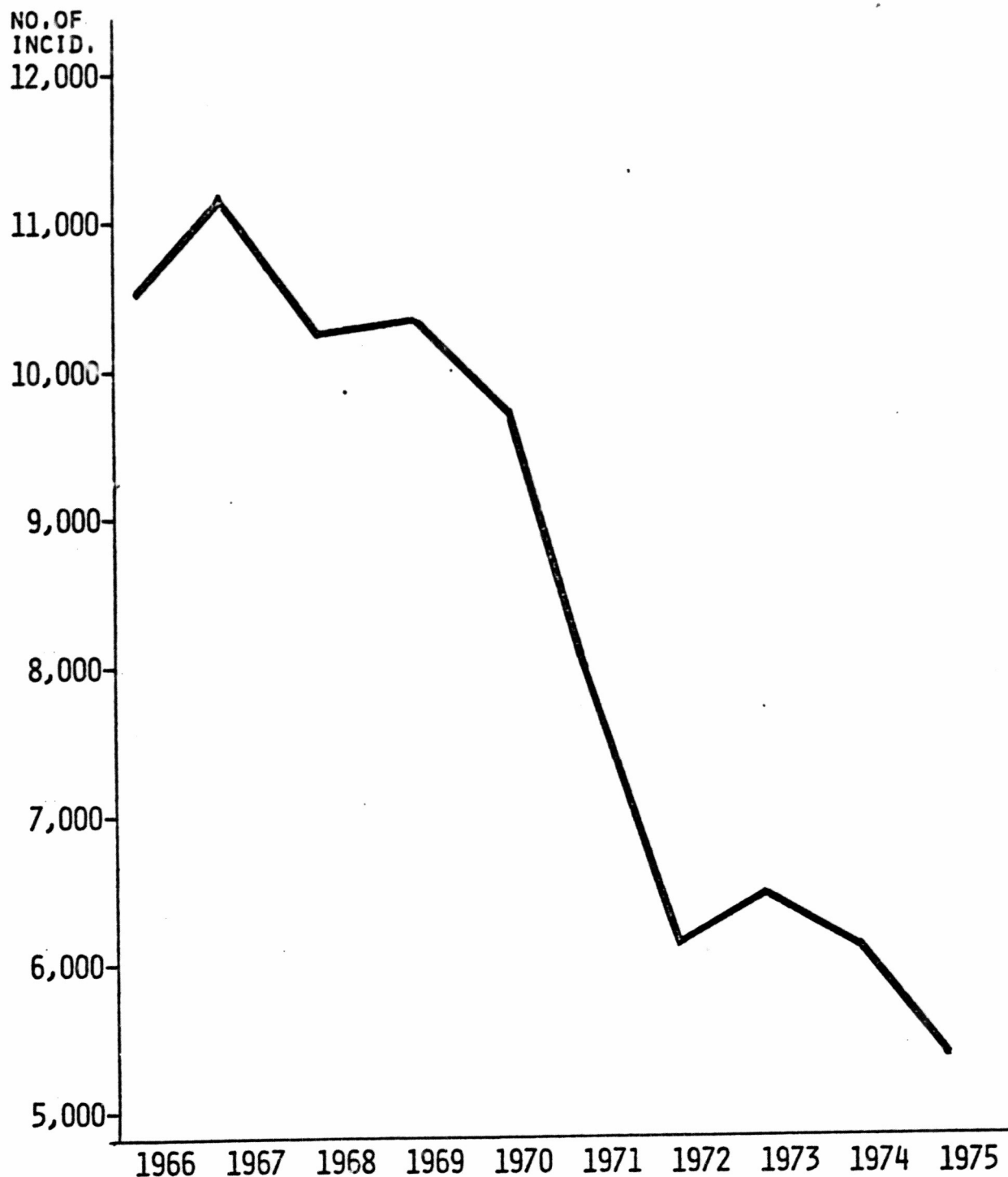
	SYSTEM TOTAL		TRANSPORTATION		STATION	
	<u>INCIDENTS</u>	<u>FREQUENCY</u>	<u>INCIDENTS</u>	<u>FREQUENCY</u>	<u>INCIDENTS</u>	<u>FREQUENCY</u>
1965-1966	10,493	8.1	3,873	3.0	6,620	5.1
1966-1967	11,197	8.6	4,058	3.1	7,139	5.5
1967-1968	10,275	7.9	3,881	3.0	6,394	4.9
1968-1969	10,355	7.8	4,264	3.2	6,091	4.6
1969-1970	9,749	7.5	4,016	3.1	5,733	4.4
1970-1971	7,984	6.5	3,276	2.7	4,708	3.8
1971-1972	6,154	5.2	2,629	2.2	3,525	3.0
1972-1973	6,442	5.87	2,680	2.44	3,762	3.43
1973-1974	6,152	5.62	2,399	2.19	3,753	3.43
1974-1975	5,356	3.18	1,931	1.79	3,425	3.18

INCIDENTS REPORTED, ARE OCCURRENCES WHICH MAY OR MAY NOT
HAVE RESULTED IN PERSONAL INJURY OR PROPERTY DAMAGE.



NEW YORK CITY TRANSIT AUTHORITY

TEN YEAR COMPARISON OF PASSENGER INCIDENTS TRANSPORTATION AND STATION DEPARTMENTS FISCAL YEARS 1965/1966 - 1974/1975



INCIDENTS REPORTED, ARE OCCURRENCES WHICH MAY OR MAY NOT
HAVE RESULTED IN PERSONAL INJURY OR PROPERTY DAMAGE.



NEW YORK CITY TRANSIT AUTHORITY

TEN YEAR COMPARISON TRANSPORTATION AND STATION DEPARTMENTS PASSENGER INCIDENT FREQUENCY RATE FISCAL YEARS 1965/1966 - 1974/1975

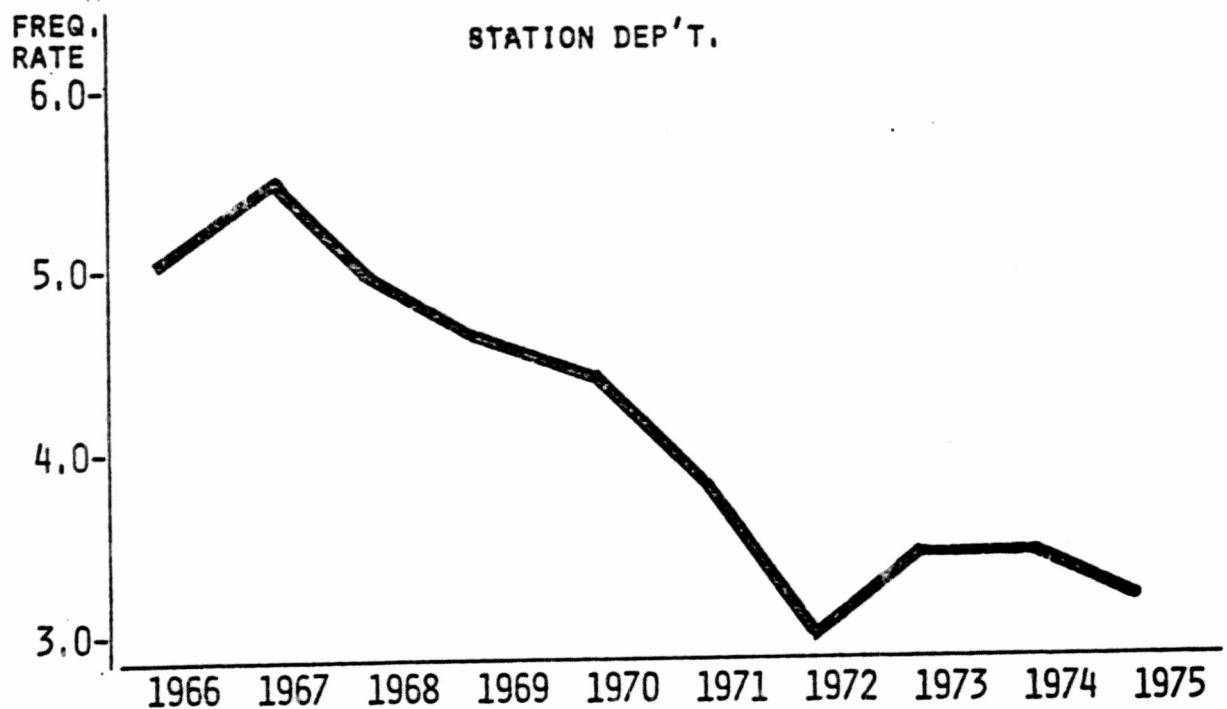
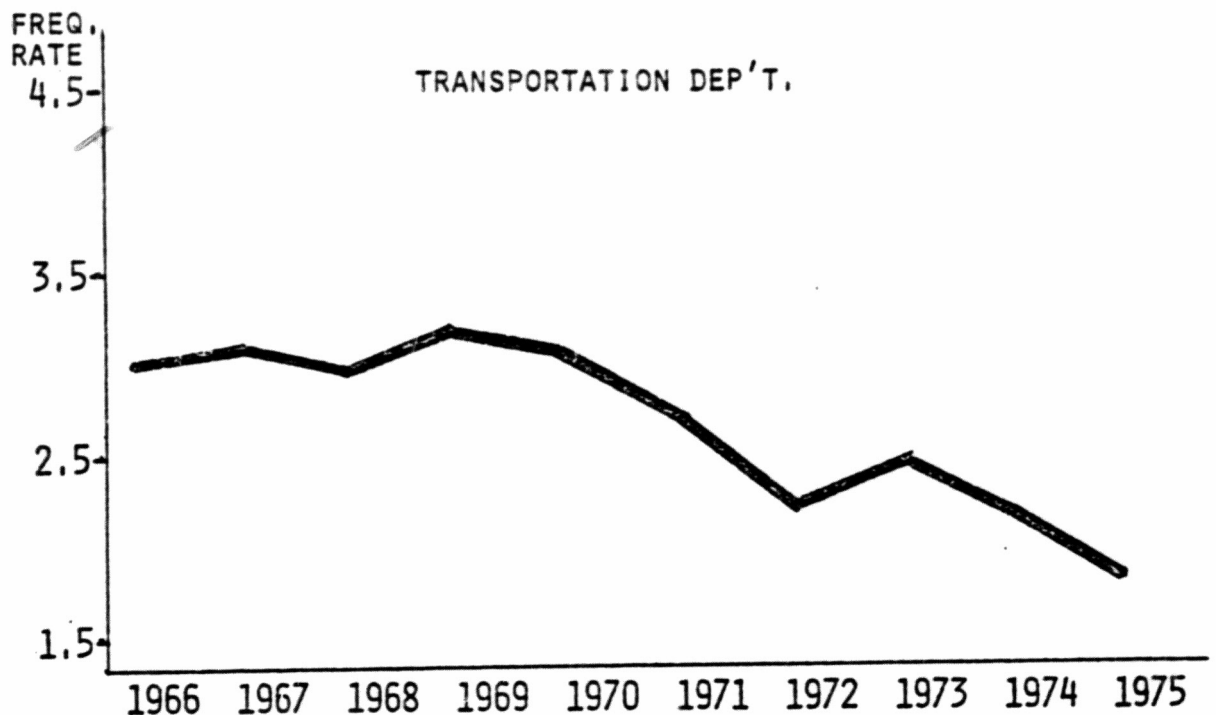


$$\frac{\text{Number of Accidents} \times 1,000,000}{\text{Divided by Number of Passengers Carried}} = \text{Frequency Rate}$$



NEW YORK CITY TRANSIT AUTHORITY

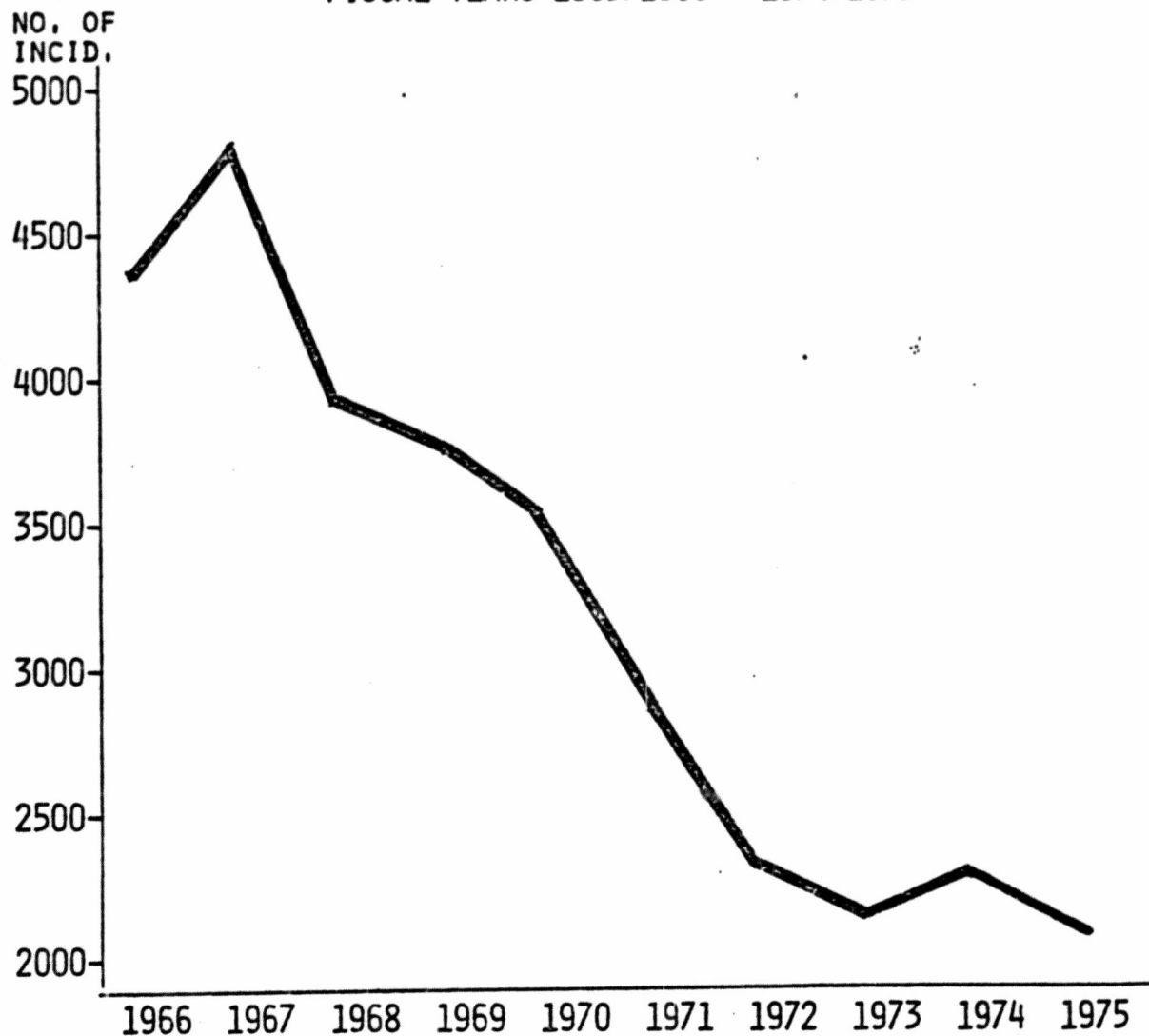
TEN YEAR COMPARISON PASSENGER INCIDENT FREQUENCY RATE FISCAL YEARS 1965/1964 - 1974/1975



$$\frac{\text{Number of Incidents} \times 1,000,000}{\text{Divided by Number of Passengers Carried}} = \text{Frequency Rate}$$

M NEW YORK CITY TRANSIT AUTHORITY

STATION DEPARTMENT
STAIRWAY PASSENGER INCIDENTS
FISCAL YEARS 1965/1966 - 1974/1975



INCIDENTS REPORTED, ARE OCCURRENCES WHICH MAY OR MAY NOT
HAVE RESULTED IN PERSONAL INJURY OR PROPERTY DAMAGE.

Friedman

NEW YORK CITY TRANSIT AUTHORITY
 EMERGENCY DEPARTMENT
 CONSOLIDATED SUMMARY OF STATION OPERATIONS
 CONTROLLING 24 HOUR PERIOD ENDING AT 11:59PM
 DATE: FRIDAY MAY 7/76

DEFENDANT'S
 EXHIBIT
I ad
 NO. 720272

ITEM	DTY.	SAFETY	FATALITY
261	INT-3		6:00AM, Pennsylvania Ave., New Lots-Report states male found on S/B track. Removed to hospital. DO A.
<u>PASSENGERS INJURED ON STATIONS</u>			
2632	IND-3		1:00PM, 5/3, Jay St., "P"- RRC Carucci 138323 reports female age 64 fell on stairway 7a-7b. Refused medical aid.
2633	INT-2		3:35PM, 5/5, 91st St., Lex.- RRC Cray 336436 reports female age 47 cut thumb of left hand on a nail on handrail at top of stairway 5-8. Medical aid called, passenger refused medical aid.
2634	INT-3		10:00PM, 5/5, Avenue "H", Bri.- RRC Gorden 330114 reports male age 21+ injured on stairway P-1. Refused medical aid.
2635	INT-3		11:30AM, 5/6, Graham Ave., 14th - RRC Masola 572530 reports male age 21+ slipped and fell descending stairway P-1A injuring lower back and back of head. Refused medical aid.
2636	IND-1		4:30PM, 145th St., "A"- RRC Davis 204564 reports female loses shoes as another passenger fell on her while ascending escalator. No medical aid requested.
<u>PASSENGERS INJURED ON TRAINS</u>			
2637	IND-1		7:50AM, 5/5, 179th St., "F"- RRC Payne 666162 reports female age 30 injured trying to get on train. Medical aid requested.
2638	IND-3		10:00PM, 5/6, 18th Ave., "F"- RRC Loyelle 537046 reports injured passengers on S/B "F" train. Refused medical aid.
<u>PASSENGERS TAKEN ILL</u>			
2639	INT-3		5:25PM, 5/6, Utica Ave., 7th, 100 Hurley 401360 reports male age 66 black-out and fell to bottom of stairway 5-5 injuring left side of forehead. Removed to hospital.
2640	IND-2		7:55PM, 5/6, 2nd Ave., (R)-RRC Carr 135581 reports female age 49 taken ill on mezzanine. Medical aid called.
<u>EMPLOYEE ACCIDENTS</u>			
2641	INT-2		9:30AM, Houston, 7th- R122 - RRC Horowitz 409676 injured middle finger on left hand while closing booth door. RRC reports to clinic #5 5/7/76.

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CONSOLIDATED SUMMARY OF STATION OPERATIONS - MAY 7, 1976 (continued)

2642 RMT-3 10:00AM, Avenue "D" Pk.- B21- RRC Shullich 820005 stated that while retrieving tokens on 5/6/76 she felt a pain in lower back. RRC report to Clinic #5, 5/7/76.

UNEMP. RRP DUTY

2643 IRT-2 12:07PM, 14th St., Lex.- RRP Alaridge 007663 was observed by S/Y #75 having alcoholic beverage on his lunch hour. RRP ordered to Jay St. for blood alcohol test and SSO. 5/7/76. A/S/S Zverding 994760 assigned.

ATTEMPTED REVENUE THEFT

2644 IRT-1 12:55PM, Simpson St., W/P. R318- RRC Carter 137085 reports attempted booth robbery. Funds loss none. TPO notified. RRC claimed pain in right shoulder. A/S/S Esposito 259205 assigned. RRC reports to SSO and Clinic #4, 5/10/76.

REVENUE THEFT

2645 RMT-3 6:15pm, Dean St., Fri.-D-8, RRC Ginn 318821 reports booth holdup and personal funds of \$62, watch, and eyeglass taken b. culprits. Booth loss \$286.50. TPO notified. A/S/S Fitzpatrick 279356 assigned. RRC reports to SSO and Clinic #4, 5/10/76.

MISCELLANEOUS

2646 IRT-1 12:35PM, Willets Pt. Flushing-RRC Deville 646669 reports female age 72 tore coat while getting up from bench on S/B platform.

FIRE ON TA PROPERTY

2647 IRT-2 2:45PM, Delancey St., - IRT reports fire on north end of S/B platform under stairway 14D. NYCFD responded.

2648 IRT-1 11:30AM, 176th St., Lex.- RRC and M/W reports track fire. No NYCFD.

2649 RMT-3 3:28PM, Alabama Ave., Jca-IRT reports fire at Alabama Avenue, Jamaica BOWL. NYCFD responded.

ref

Bernard Eynan
Asst. Gen. Supt., Stations

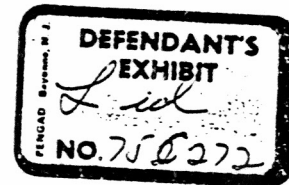
Ancorp National Services, Incorporated
477 Madison Avenue New York, N.Y. 10022
Telephone (212) 833-1100



Office of the Secretary

March 6, 1975

Honorable John G. de Roos
General Counsel
New York City Transit Authority
370 Jay Street
Brooklyn, New York 11201



Dear Mr. deRoos:

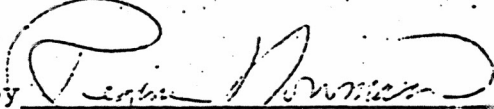
In answer to your inquiry as to the policy observed by Ancorp National Services, Inc., with respect to the sale and distribution of newspapers, periodicals, etc., on the newsstands operated by Ancorp National Services, Inc., please be advised that the newsstands operated by us directly and the newsstands operated by our licensees have accepted, now accept and will continue to accept newspapers, periodicals, etc. of any political or social content provided these newspapers and periodicals, etc. are not obscene within the meaning of the law.

Moreover, should any person desire a license to operate one of our newsstands, and should there be one available, and should the proper financial terms be agreed upon, no one will be barred, nor to the best of my knowledge has anyone ever been barred, nor do we now bar any proper business arrangement.

If there is any further information that you may desire with respect to our policy of operation, please do not hesitate to call upon us.

Very truly yours,

ANCORP NATIONAL SERVICES, INC.

By 
Corporate Counsel's Office

RN:ms

DEFENDANTS' EXHIBIT L
132a

Formal

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

PAT WRIGHT and JACK LIEBERMAN, :

Plaintiffs, :

-against- :

No. 75 C 272

CHIEF OF TRANSIT POLICE, and :

CHAIRMAN and MEMBERS OF THE BOARD :

OF THE NEW YORK CITY TRANSIT :

AUTHORITY, :

Defendants. :

- - - - - x

Appearances:

RABINOWITZ, BOUDIN & STANDARD, ESQS
Attorneys for Plaintiffs
HERBERT JORDAN, ESQ
Of Counsel

STUART RIEDEL, ESQ
Attorney for Defendants
JAMES P. McMAHON, ESQ
Of Counsel

BRUCHHAUSEN, D. J.

This action was commenced alleging violations
of the plaintiffs' civil rights. The plaintiffs are
members of the Socialist Workers Party who have been denied
permission to sell socialist newspapers in New York City
subway stations.

The trial of this action took place on May 13, 1976 before this court without a jury.

The testimony of the plaintiffs consisted of two witnesses who testified that they offered for sale to the general public, using the facilities of the city transit system, newspapers, "The Militant" and "Young Socialist." It was testified that in December, 1974, the plaintiffs were prevented from selling these papers by an unidentified policeman on the Franklin Avenue IRT, 7th Avenue line, and at the 110th Street, IRT, 7th Avenue line. The wholesale or bulk price of these newspapers is 17 cents per copy for "The Militant", and 15 cents per copy for the "Young Socialist." The papers are then offered to the public on the station platforms for 25 cents per copy. The proceeds are then returned to the Socialist Workers Party. It was further testified that a newstand rental could not be afforded by the plaintiffs.

The testimony of the defendants indicated that the platform widths are narrow, between ten and twenty feet wide, that there are four hundred and sixty subway stations in use, that the system carries approximately

three and one-half million riders daily, that circumstances arise creating over crowding of platforms, that crowds have caused accidents, such as falling onto the roadbeds, that there are approximately 59 concession stands in present operation, and in excess of 162 active newspaper stands, under an exclusive contract with Ancorp National Services, Inc., who agree to accept political newspapers for sale, that any person including the plaintiffs may apply for a license to operate a newstand, if financial terms can be agreed upon, that these concessions provide substantial revenue to the Transit Authority, that the police force of the system must cover several stations, that the plaintiffs' operations of selling and sales talk with the public would or could interfere with the flow of passengers, that no one is permitted to sell any item because the Authority's rules and regulations are designed for the safety and comfort of the passengers, and finally the platforms are not designed for a waiting room as one would find in the Port Authority Bus Terminal.

The New York City Transit Authority is a public benefit corporation which is to operate a public improvement for the benefit of the people. New York General

(Corporation Law, §3(4).

The Public Authority Law, §1202 provides that the purpose of the Authority is to operate the city-owned transit facilities for the convenience and safety of the public.

The general powers of the Authority, among others, is to rent space and grant concessions, to fix and collect rentals therefrom. It is also empowered to maintain a transit police department to preserve peace, prevent crime, and dispense unlawful assemblage that obstructs passenger passage.

(There is no doubt that the plaintiffs' conduct would interfere with the safety and convenience of the public. The plaintiffs by applying for and obtaining a newstand would cause no interference to the public, and would be entirely free to offer their papers for sale. If the plaintiffs were to prevail, it is conceivable that anyone would be able to use the public stations to offer for sale any item for profit, and completely interfere with the free flow of traffic. The Authority certainly has the right and obligation to adopt rules and regulations barring plaintiffs type of operation, all in the interest

(of public safety. To hold otherwise would cause complete havoc with the passengers and obstruct their movement to and from the trains. Furthermore, the transit is entitled to rent space and thereby receive rentals to be used by it for its own purposes. The case at bar deals with commercial distribution.

(The plaintiffs rely heavily upon the case of *Wolin v. Port of New York Authority*, 392 F.2d 83 (2d Cir. 1968). That case is clearly distinguishable. The plaintiffs there were using the public area within the terminal to discuss with people therein their political views. It is a miniature shopping mall, and no charge is required to enter the terminal, wherein politics may be discussed.

The case at bar concerns itself with a commercial venture, a sale of papers, wherein political views are attempted to be discussed upon a narrow station platform. This type of activity has been shown by testimony to be hazardous to the general public.

(It is conceded by the defendants, that the plaintiffs have an absolute right to sell their literature upon subway stations. However, they have the corresponding

(obligation not to engage in activities that may jeopardize the safety and free flow of traffic of the public, and not to interfere with the right of the defendants to collect revenue from their leases with newstands and concession stands. These are matters of compelling state interests which require the Authority to promulgate rules and regulations for the benefit of the public.

It follows, therefore, that the complaint be dismissed.

So ordered.

(Copies hereof will be forwarded to the attorneys for the parties.

Walter Bruchhausen
Senior U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

PAT WRIGHT and	:	
JACK LIEBERMAN,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	75 C 272
	:	
CHIEF OF TRANSIT POLICE, and	:	
CHAIRMAN and MEMBERS OF THE NEW	:	<u>NOTICE OF APPEAL</u>
YORK CITY TRANSIT AUTHORITY,	:	
	:	
Defendants.	:	

- - - - - x

NOTICE IS HEREBY GIVEN that, pursuant to 28 U. S. C.
§ 1291, plaintiffs Pat Wright and Jack Lieberman appeal to
the United States Court of Appeals for the Second Circuit
from the Order entered July 15, 1976, dismissing the Complaint.

S/
HERBERT JORDAN, Esq.
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BILL OF RIGHTS FOUNDATION
Attorneys for Plaintiffs
30 East 42nd Street
New York, New York 10017
(212) OXford 7-8640

Dated: August 13, 1976
New York, New York